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Version: Version of Record

Link(s) to article on publisher's website:

<http://dx.doi.org/doi:10.21954/ou.ro.00013d18>

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Against his will? Recovering male on male sexual violence in London, 1761- 1861

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Thesis submitted for the degree of Doctor of Philosophy

The Open University

Department of History

June 2021

Abstract

English and Welsh law only explicitly criminalised non-consensual homosexual activities with the Sexual Offences Act (1967). This thesis demonstrates how non-consensual acts can be identified in the past when all homosexual activity was illegal, by examination of court records and newspaper reporting of criminal trials in late eighteenth and nineteenth century London. Existing historiography has uncovered a huge quantity of homosexual acts occurring in the capital in this period, but historical literature on sexual violence has largely ignored the experiences of men. Therefore, this thesis is the first full-length study to focus specifically on sexual assaults alleged between men.

Evidence is explored through the multitude of offences where it appeared, including sexual crimes but also theft and other offences, heard in courtrooms ranging from the summary courts to the Old Bailey and beyond, demonstrating that sexual violence between men was exposed at all levels of the criminal justice system. Furthermore, this thesis considers the discourse of sexual violence in these sources, specifically the terminology used to describe it which rarely differed from consensual homosexual acts, and that frequent elements often appeared in the narratives of victims and perpetrators. It also assesses what these records can tell us about patterns of sexual violence, and finds that most instances consisted of unwanted touching on the genitals alleged to have occurred at night in spaces connected with male homosexuality between men of relatively similar age and social status. Moreover, this thesis examines what the courts thought of different types of prosecutions, exposing the reasons for conviction and sentences, for example heightened physical violence and the presence of witnesses, and that convicted men were rarely treated differently from the norm in terms of post-trial outcomes.

Acknowledgements

Firstly, I'd like to thank the Consortium for the Humanities and the Arts South-east England (CHASE) and the Arts and Humanities Research Council (AHRC) for agreeing to fund this research, and the Open University for being a home for it. The OU is an incredible and important institution, and I'm proud to have studied here.

My largest debt of gratitude goes to my supervisory team, Paul Lawrence and Rosalind Crone. Through their guidance and encouragement this study has been greatly enriched, and I'm extremely lucky to have had such brilliant supervisors. I'd also like to thank the wider academic community of the OU, especially the History department, for their sustained interest in this project. Special thanks to Marie Claire Leroux for always being friendly and helpful.

Thanks also to my fellow OU History and Classics PhDs, especially Louise Ryland Epton and Sarah Middle. It would have been a much lonelier experience without you and our Slack group.

Appreciations also to the staff at the London Metropolitan Archives and The National Archives. Of special mention are the Modern Archives and Manuscripts team of the British Library, especially Laura Walker, Alexander Lock, and Jessica Gregory. I was lucky enough to conduct a three-month placement with them, which was an incredibly fun and rewarding experience.

To Catherine, for her constant support throughout this entire process. Thanks for putting up with me and making me believe I could get this thesis finished when I didn't. Thanks also to Daisy and Coco for providing a welcome distraction during the final months of writing up.

Lastly, I would like to thank Dr Amanda Capern. It was through her courses at Hull University that I initially became interested in the history of gender and sexuality. Without her support and friendship over the years this thesis would not have happened.

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Chapter One: Introduction

In late 1838, the John Bull steamer was boarded by customs officers to check for illegal smuggling. According to *The Times*, one of the officers, David Burton, was subsequently accused of indecently assaulting a member of the crew, Francis Clarke.¹ The *Old Bailey Proceedings* stated that he was sentenced to two years penal imprisonment for sodomy, though neither the trial nor newspaper report gave details on the exact circumstances of the alleged assault.² Another set of sources – criminal petitions – illuminate the case further. According to Clarke, the officer had ‘committed an indecent assault on his person as he lay asleep’, revealed in one of Burton’s multiple petitions for mitigation of his sentence, primarily due to inadequate counsel.³ Furthermore, Burton refuted the allegations of sexual assault by detailing a conspiracy to conceal illegal smuggling. Enclosed with the petitions was an anonymous letter, supposedly written by the crew, confessing that the claims were false. However, despite this revelation, David’s repeated requests for mitigation were refused.

This case demonstrates the complexities of attempting to investigate sexual violence between men in the past, when all homosexual acts, regardless of consent, were criminalised. Sexual assault only became a specific crime in 1967 with the concurrent decriminalisation of consensual homosexual activity.⁴ As such, if all homosexual acts were illegal, how can we separate the non-consensual from the consensual? Furthermore, as the case above demonstrates, false accusations of sexual assault were a possibility. Therefore, once evidence has been found, how can we use it to better understand the context of male on male sexual assault?

This thesis will answer these questions by examining sexual violence perpetrated by men on men in a period when all homosexual acts were illegal: late eighteenth and nineteenth century London. The capital experienced dramatic demographical transformation at this time, with a population of at least 600,00 in 1750 rising to around a million in 1801 and then

¹ *The Times*, 30 October 1838.

² *Old Bailey Proceedings* (hereafter *OBP*), trial of David Burton, October 1838 (t18381022-2484).

³ *The National Archives* (hereafter *TNA*), Home Office: Criminal Petitions: Series I (HO17/86/PZ1).

⁴ *Sexual Offences Act*, c.60 (1967).

to nearly two and a half million fifty years later.⁵ The same period witnessed the inception of the criminal justice system which exists today. There were developments such as the creation of fully professional police forces, which meant that more manpower was devoted to the detection of violent and acquisitive crimes, and the transition from private to public prosecution, which meant that victims of sexual violence were less and less likely to be primarily responsible for bringing prosecutions. More specifically, committals for the crime of sodomy peaked around the turn of the nineteenth century, after increasing for several decades. At the same time there was growth in the number of newspapers and expansion in their size and content, including greater coverage of crime and criminal justice stories, including sexual activity between men.

Historians have used evidence of male homosexual acts extensively, most notably in debates over the presence or construction of a distinct homosexual identity in the past. While these studies have been imperative in locating the existence of non-normative sexual activity and subcultures, most have missed or side-lined the issue of consent. On the other hand, this notion has been integral in numerous studies on the sexual lives of women in the past. The lack of men appearing as victims in historical research has served to reinforce the assumption that they cannot be victims of sexual assault.

This thesis challenges such a belief, by locating and examining evidence of alleged non-consensual sexual activity, showing that men were victims of sexual violence in London during this transformative period. Through an investigation of court records and newspaper reporting of criminal trials, it uncovered instances of alleged sexual violence in a range of offence categories. It reveals how non-consensual sexual activity between men was dealt with by the criminal justice system. This thesis also brings to the fore the narratives of victims and perpetrators, exploring how accusations of sexual assault were used and refuted by the men involved, and what can be learned about the actuality of non-consensual homosexual activity.

It should be emphasised that terms used throughout this thesis, such as sexual violence and sexual assault, are from the present day and were not used by contemporaries to refer to

⁵ L.D. Schwarz, *London in the Age of Industrialisation: Entrepreneurs, Labour Force and Living Conditions, 1700-1850* (Cambridge: Cambridge University Press, 1992), 125–28.

male victims. However, this terminology is used to demonstrate the range of sexual violence alleged (and in many cases likely suffered) by men who appeared in court. 'Sexual violence' is used here as an umbrella for all evidence uncovered and includes serious assaults such as forced penetration or rape, along with sexual assault, such as unwanted genital touching. Although not all acts uncovered were always 'violent' per se, they were not consensual and as such are included within the overarching remit of 'sexual violence'.

The current chapter identifies relevant gaps in the various bodies of literature pertinent to this study. Works on the changing levels (and tolerance for) violent interpersonal conduct are initially considered, before examination of research on the topic of sexual violence against women, and male homosexuality thereafter. This review is followed by a discussion of the research questions which inform the thesis, the sources consulted, and structure of the following chapters.

Literature Review

This review begins by examining the development of studies on interpersonal violence, which provide a contextual basis for the approach present in this thesis. It is followed by an investigation of works specifically on sexual violence, highlighting common themes and difficulties in uncovering evidence, and most importantly demonstrating that male victims have often been indirectly overlooked. Finally, the review explores literature on sexual relations between men, again providing a contextual base for this study, and showing how most research has largely neglected the question of consent.⁶

Interpersonal Violence

Sexual violence between men must be placed within the context of general levels of violence in everyday life, which changed distinctly over the period of study. Historians have long debated the significance of such changes, with literature appearing in the 1970s on the history of interpersonal violence in British society. Studies used quantitative analysis of criminal statistics to attempt to measure violence, especially focusing on the nineteenth

⁶ The term 'homosexual' is used throughout this thesis to denote same sex acts but is not intended to imply a sexual identity. Furthermore, the study focuses exclusively on sexual acts between men, and as such any use of the term should be assumed to refer only to men.

century.⁷ This research led to spirited discussions the following decade over the use of statistics to interpret violent crime, mostly centring on homicide.⁸ For instance, Lawrence Stone used statistics of murder to propose that medieval society was twice as violent as early modern society, and that early modern society was at least five times more violent than contemporary society. Furthermore, the typical victim of fatal violence changed from non-family members to an increase of family homicides in the mid-seventeenth century; fatal assaults were now due to 'sexual passion' rather than 'casual brutality'.⁹ However, his usage of statistics did not go unquestioned, and a back and forth debate with Sharpe ensued over the applicability of crime rates in interpreting violent crime, which was echoed by others.¹⁰ Hence, there are methodological difficulties in using historical statistics to measure instances of crime. Therefore, the fluctuations of prosecutions containing evidence of sexual violence between men, explored later, have been conducted with these caveats in mind.

Explanations for the decline in the number of recorded homicides tend to follow the cultural model of the 'Civilising Process'; with modernisation came a reformation of manners where people settled their differences by means other than violence.¹¹ This model has been influential in providing cultural explanations for declining violence in blood sports, public duelling, the end of the slave trade, and gradual end of capital punishment.¹² Indeed, it

⁷ V. A. C. Gatrell and T. B. Hadden, 'Nineteenth-Century Criminal Statistics and Their Interpretation', in *Nineteenth Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data*, ed. E. A. Wrigley (London: Cambridge University Press, 1972); David Philips, *Crime and Authority in Victorian England: The Black Country, 1835–1860* (London: Croom Helm, 1977); V. A. C. Gatrell, 'The Decline of Theft and Violence in Victorian and Edwardian England', in *Crime and the Law: The Social History of Crime in Western Europe since 1500*, ed. V. A. C. Gatrell, Bruce Lenman, and Geoffrey Parker (London: Europa Publications, 1980), 238–337; For earlier periods see Joel Samaha, *Law in Historical Perspective: The Case of Elizabethan Essex* (New York: Academic Press, 1974); James Swanston Cockburn, 'The Nature and Incidence of Crime in England 1559–1625: A Preliminary Survey', in *Crime in England 1550–1800*, ed. James Swanston Cockburn (London: Methuen, 1977).

⁸ Ted Robert Gurr, 'Historical Trends in Violent Crime: A Critical Review of the Evidence', *Crime and Justice: An Annual Review of Research* 3 (1981): 295–353; Joanna Innes and John Styles, 'The Crime Wave': Recent Writings on Crime and Criminal Justice in Eighteenth-century England', *Journal of British Studies* 25, no. 4 (1986): 380–435.

⁹ Lawrence Stone, 'Interpersonal Violence in English Society, 1300–1980', *Past and Present* 101 (1983): 22–33.

¹⁰ James Sharpe, 'The History of Violence in England: Some Observations', *Past & Present* 108, no. 1 (1985): 206–15; Lawrence Stone, 'The History of Violence in England: Some Observations: A Rejoinder', *Past & Present* 108 (1985): 216–24; James Swanston Cockburn, 'Patterns of Violence in English Society: Homicide in Kent, 1560–1985', *Past and Present* 130, no. 1 (1991): 70–106; See also John M. Beattie, *Crime and the Courts in England 1660–1800* (Princeton: Princeton University Press, 1986), 74–112, 135–39.

¹¹ Norbert Elias, *The Civilising Process. Vol. 1, The History of Manners*, trans. Edmund Jephcott (Oxford: Blackwell, 1978) referenced in Elizabeth Foyster, *Marital Violence: An English Family History, 1660–1857* (Cambridge: Cambridge University Press, 2005), 33.

¹² Beattie, *Crime and the Courts*, 122, 135–39.

provides useful explanation for the changing nature of punishments given to defendants in cases containing sexual violence between men. However, the significance of the model in reducing levels of violent crime has been questioned. Schwerhoff has argued that it is restrictive, and conceptualises violence and aggression 'as if they were just there naturally, as a proposition of the human being, which can be socially integrated and abolished only secondarily'.¹³

Historians continued to interrogate the levels of violence in society through the following decades, including in Europe.¹⁴ However, these findings were questioned by historians who advocated for a qualitative analysis to better understand violent behaviour.¹⁵ The 1990s saw these qualitative considerations come to the forefront, with research expanding to look at the role of courts and legislators in response to interpersonal violence.¹⁶ Indeed, the courts where prosecutions were heard, and what judges and juries thought of them, are central to understanding how male on male sexual violence was perceived.

Studies also developed to look at the cultural interpretations of violence; a cultural approach that is present in this thesis.¹⁷ The meanings of violence itself were contested, in a move away from homicide. For instance, Spierenburg advocated the use of two poles of violence; impulsive versus planned or 'rational' violence, and ritual or expressive versus

¹³ Gerd Schwerhoff, 'Criminalized Violence and the Process of Civilisation: A Reappraisal', *Crime, Histoire & Sociétés / Crime, History & Societies* 6, no. 2 (2002): 103–26. He proposes seeing violence as a social code and medium of social control. This article was in response to Spierenburg, who concluded that scholars have applied a simplistic and reductionist interpretation of Elias, who actually left room for a 'creative elaboration' of his theory of civilisation, see Pieter Spierenburg, 'Violence and the Civilizing Process : Does It Work?', *Crime, Histoire & Sociétés / Crime, History & Societies* 5, no. 2 (2001): 87–105.

¹⁴ Pieter Spierenburg, 'Faces of Violence: Homicide Trends and Cultural Meanings: Amsterdam, 1431-1816', *Journal Of Social History* 27, no. 4 (1994): 701–16; 'Long-Term Trends in Homicide: Theoretical Reflections and Dutch Evidence, Fifteenth to Twentieth Centuries', in *The Civilization of Crime. Violence in Town and Country since the Middle Ages*, ed. E.A Johnson and E.H Monkkenen (Chicago: University of Illinois Press, 1996), 63–105; Manuel Eisner, 'Modernization, Self-Control and Lethal Violence. The Long-Term Dynamics of European Homicide Rates in Theoretical Perspective', *The British Journal of Criminology* 41, no. 4 (2001): 618–38.

¹⁵ Randolph Roth, 'Homicide in Early Modern England 1549–1800: The Need for a Quantitative Synthesis', *Crime, Histoire & Sociétés / Crime, History & Societies* 5, no. 2 (2001): 33–67; Schwerhoff, 'Criminalized Violence'.

¹⁶ Peter King, 'Punishing Assault: The Transformation of Attitudes in the English Courts', *Journal of Interdisciplinary History* 27, no. 1 (1996): 43–74.

¹⁷ Malcolm Gaskill, 'Reporting Murder: Fiction in the Archives in Early Modern England', *Social History* 23, no. 1 (1998): 1–30. For another cultural explanation for murder, see Pieter Spierenburg, *A History of Murder : Personal Violence in Europe from the Middle Ages to the Present* (Cambridge: Polity Press, 2008).

instrumental violence, while others focused on the exercising of power.¹⁸ Several historians have challenged simplistic notions of violence, and noted the importance of contemporary interpretations of such acts, such as in the media.¹⁹ Newspaper reporting of criminal trials formed an important source of evidence for sexual violence between men, and the narratives they presented are crucial in understanding contemporary interpretation of these acts.

An alternative notion of violence was put forward by Wood, who proposed that the meanings of violence are 'continually fluctuating, and an "economy of violence" is a complex nexus of custom, law, economics, ethnicity, politics and psychology'. In one of the most detailed studies of violence in the nineteenth century, Wood demonstrated that there was a shift from a 'customary' mentality, which legitimised physical confrontation, and was associated with the poor and working class, to a 'civilised' mentality, which centred on being rational and self-restrained, and was central to the newly emerging identity of the middle class. Wood used a variety of sources for his argument, including criminal records, pamphlets, and newspapers.²⁰ The present thesis uses similar documents, specifically prosecution records and newspaper reporting of criminal trials. While wide-ranging and appropriate, Wood's study solely focused on London, limiting his argument's attribution to outside of the metropolis. Wood is also a proponent of the more recent post-cultural turn in studies of violence which integrate historical research with theoretical considerations from evolutionary psychology.²¹ While cultural perspectives remain dominant, the future study of violence is looking more interdisciplinary.

¹⁸ Spierenburg, 'Faces of Violence'; 'Long-Term Trends in Homicide'. This model has been challenged by Schwerhoff, 'Criminalized Violence', 116 who stated that the attribution of single cases to these poles does not make logical sense. See also Susan Dwyer Amussen, 'Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England', *Journal of British Studies* 34, no. 1 (1995): 1–34.

¹⁹ Judith Rowbotham, 'Criminal Savages? Or "Civilizing" the Legal Process', in *Criminal Conversations: Victorian Crimes, Social Panic and Moral Outrage*, ed. Judith Rowbotham and Kim Stevenson (Illinois: University of Illinois Press, 2005), 93; John Carter Wood, 'Locating Violence: The Spatial Production and Construction of Physical Aggression', in *Assaulting the Past: Violence and Civilization in Historical Context*, ed. Katherine D. Watson (Newcastle: Cambridge Scholars Publishing, 2007), 20–37.

²⁰ John Carter Wood, *Violence and Crime in Nineteenth-Century England, The Shadow of Our Refinement* (London: Routledge, 2004), 2.

²¹ John Carter Wood, 'A Change of Perspective: Integrating Evolutionary Psychology into the Historiography of Violence', *The British Journal of Criminology* 51, no. 3 (2011): 479–98; 'Future Agendas for Research on Violent Crime: The Challenge to History from Evolutionary Psychology', *Crime, Histoire & Sociétés / Crime, History & Societies* 21, no. 2 (2017): 353–61.

Following the explosion of qualitative interests, violent acts committed by men were brought to the forefront, and masculinity became an important explanation for violence.²² Authors have focused on working class masculinity and found that a failure of achieving notions of masculinity could lead to violence and even homicide.²³ This sentiment is echoed in the work of Wiener, who explains that the nineteenth century saw significant reconstruction in the nature of masculine criminality, with new standards of manliness, and a greater intolerance of male violence against women..²⁴ Hence, masculinity is an important filter in understanding criminality, and cases of sexual violence between men sometimes contained extended statements on the presence or lack of it in victims or perpetrators.

Historians have also debated the idea that despite declines in public violence, it persisted in 'hidden contexts', such as domestic and sexual violence.²⁵ Evidently, this is prescient to the current thesis as evidence of sexual violence against men may be pushed out of view, and made more difficult to recover. However, this move from public to private violence has been questioned by scholars of marital violence. In one of the first studies of marital violence, Tones used convictions of aggravated assaults on women and concluded that there was a decline in working-class marital violence from the mid-late nineteenth century.²⁶ However, this decline was questioned by scholars who commented on the

²² Pieter Spierenburg, ed., *Men and Violence: Gender, Honor, and Rituals in Modern Europe and America* (Ohio: Ohio State University Press, 1998); Martin Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830–1914* (Cambridge: Cambridge University Press, 1990); Martin Wiener, 'The Victorian Criminalization of Men', in *Men and Violence: Gender, Honor and Rituals in Modern Europe and America*, ed. Pieter Spierenburg (Columbus: Ohio State University Press, 1998), 197–212; Martin Wiener, *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England* (Cambridge: Cambridge University Press, 2004); Clive Emsley, *Hard Men: Violence in England since 1750* (London: Hambledon & London, 2005); Jenny Skipp, 'Violence, Aggression and Masculinity During the Eighteenth Century', *Cultural and Social History* 4, no. 4 (2007): 567–73.

²³ Anna Clark, 'Domesticity and the Problem of Wifebeating in Nineteenth Century Britain: Working-Class Culture, Law and Politics', in *Everyday Violence in Britain 1850–1950: Gender and Class*, ed. Shani D'Cruze (Harlow: Longman, 2000); Ginger Suzanne Frost, "'I Am Master Here': Illegitimacy, Masculinity, and Violence in Victorian England', in *The Politics of Domestic Authority in Britain since 1800*, ed. L. Delap, B. Griffin, and A. Wills (London: Palgrave Macmillan, 2009).

²⁴ Wiener, *Men of Blood*, xii, 6. Moreover, he only studies rape and homicide.

²⁵ Robert Shoemaker, 'Male Honour and the Decline of Public Violence in Eighteenth-Century London', *Social History* 26, no. 2 (2001): 190–203; Anna Clark, *Women's Silence, Men's Violence: Sexual Assault in England 1770–1845* (London: Pandora Press, 1987); Margaret Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth century London', *Gender and History* 4, no. 1 (1992): 10–33; Robert Shoemaker, 'The Taming of the Duel: Masculinity, Honour and Ritual Violence in London, 1660–1800', *Historical Journal* 45, no. 3 (2002): 525–45, which examines the changing nature of public violence in regards to the 'reformation' of the duel.

²⁶ Nancy Tones, 'A "Torrent of Abuse": Crimes of Violence between Working-Class Men and Women in London, 1840–1875', *Journal of Social History* 11, no. 3 (1978): 328–45.

difficulty of using statistics, especially convictions, for evidence of declines in actual violence.²⁷ The “dark figure” – the number of actual crimes which occurred – is notoriously difficult to determine, especially for violent behaviour. This is particularly the case for sexual relations between men, which not only contained the risk of loss of respectability but could result in execution if proved.

Researchers also commented on the difficulties of defining the public and private. Joanne Bailey, for instance, used a sample of 172 court cases of marital cruelty to find evidence of violence, and concluded that notions of public and private spheres were mutable and open to change, and that contemporaries used ‘public’ to mean witnessed and ‘private’ to mean not witnessed, which did not necessarily correspond to the domestic ‘home’. Furthermore, cases show that marital conflict could occur both inside and away from the home. Thus, she concludes that the fluidity of these terms and the spatial dynamism of ‘wife beating’ makes it impossible to make sweeping narratives about the privatisation of violence.²⁸ In addition, researchers have noted continuities in tolerant attitudes to domestic violence, with evidence found in criminal cases of matrimonial cruelty, criminal statistics, and public debates in both English and Scottish contexts.²⁹ Authors have also challenged earlier studies on the changing nature of marriage which asserted a switch from patriarchal to companionate unions.³⁰

²⁷ Ellen Ross, “‘Fierce Questions and Taunts’: Married Life in Working-Class London, 1870–1914’, *Feminist Studies* 8, no. 3 (1982): 575–602; Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London: Routledge, 1992), 38.

²⁸ Joanne Bailey, “‘I Dye [Sic] by Inches’: Locating Wife Beating in the Concept of a Privatization of Marriage and Violence in Eighteenth-Century England’, *Social History* 31, no. 3 (2006): 273–94. See also Foyster, *Marital Violence*, 168–204, who shows that marital violence continued to be open to the view of households’ members in the nineteenth century regardless of social rank.

²⁹ Annmarie Hughes, ‘The “Non-Criminal” Class: Wife-Beating in Scotland (c. 1800–1949)’, *Crime, Histoire & Sociétés / Crime, History & Societies* 14, no. 2 (2010): 31–54; Joanne Bailey and Loreen Giese, ‘Marital Cruelty: Reconsidering Lay Attitudes in England, c. 1580 to 1850’, *The History of the Family* 18, no. 3 (2013): 289–305.

³⁰ Stone advocated for a model which saw marriage develop from a patriarchal to a companionate union in the mid-eighteenth century (which corresponds neatly with his argument of declining interpersonal violence as specified above), while James Hammerton challenged this and show that the patriarchal model coexisted with more companionate marriages well into the nineteenth century, thus showing that a turn to civility was not always reflected throughout society, Lawrence Stone, *The Family, Sex and Marriage in England, 1500–1800* (London: Nicolson, 1977); James A. Hammerton, ‘Victorian Marriage and the Law of Matrimonial Cruelty’, *Victorian Studies* 33, no. 2 (1990): 269–92; See also his *Cruelty and Companionship* and Joanne Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1600–1800* (Cambridge: Cambridge University Press, 2003).

Hence, scholars of marital violence had difficulty in uncovering evidence of actual violent marital behaviour, and so have used a variety of material to do so – legal cases of cruelty and assault, public debates, criminal statistics, for example. Similarly, this thesis faces the same problem of attempting to find evidence of a behaviour that is often hidden. However, it also considers men as victims of sexual violence, which the above literature on marital violence has failed to do.

As has been demonstrated, the history of interpersonal violence developed from a focus on largely quantitative considerations and examinations of levels of violence in the past to a qualitative turn which questioned the meanings of violence, with more recent turns towards post-cultural explanations. Many of the concerns of this literature are present in the thesis, specifically in attempting to understand the shifting incidence of criminal acts over time, how these acts were presented and perceived in court records and newspaper coverage, and, importantly, the difficulties of recovering evidence. Another area of research which partially evolved from the study of violence and has been hinted at above is sexual violence. However, as will be demonstrated, most studies have focused on women as victims.

Sexual Violence

Historical research on sexual violence is vast; consequently, the following review emphasises several trends. Most importantly, it is shown that the majority of studies have focused on women as victims, indirectly overlooking the experiences of men. As such, frameworks for understanding historical sexual violence have not taken male victims into account. On the other hand, this thesis shares some of the difficulties with studies that take women as their focus, for instance, the difficulties of recovering evidence and lack of detail in sources. Furthermore, several concepts are applicable to the study of both men and women, such as the importance of the social concept of respectability. Lastly, while most research has been victim-focused, more recent analyses have considered the role of the perpetrator, which this thesis addresses.

Sexual violence as an academic focus has a distinct trajectory, arising specifically out of feminist concerns over sexual violence in the 1970s, as well as scholars working on gender and interpersonal violence, including those above. Brownmiller's ground-breaking *Against*

Our Will ignited academic work on rape. It proposed that rape was not about sex, but patriarchal power; it amounts to 'a conscious process of intimidation by which all men keep all women in a state of fear'.³¹ Brownmiller swept across many places and time periods, asserting that rape served the interests of patriarchy in the war against women; and even if a man did not rape, he accrued the benefits. Rape was thus not just an individual act, but a political one. This study challenged conventional discourses and practices, offering a political perspective on rape.

Despite this, it was heavily criticised on many counts, not least for lacking historical specificity. Shorter stated that Brownmiller misrepresented rape in the past by seeing it as a historical constant, and that while contemporary rape could be political in nature due to feminism, rapes in the early modern period happened due to sexual frustration with the late onset of marriage. Furthermore, a decrease in the incidence of rape was because of an increase in romantic relations.³² A somewhat similar argument was espoused by Porter, who asserted that sexual violence should be seen in terms of deviance, as the disruptive acts of marginal men.³³ As they were on the fringes of acceptable sexual behaviour, they did not serve patriarchy.

However, both arguments were later criticised in turn for lacking systematic analysis of the historical construction of sexual violence. D'Cruze stated that when the social construction of sexuality is taken into account, sexual frustration is thus also historically specific. A greater understanding resulted from a conceptual framework that 'pays attention to patriarchy, power and social relations'. It is important to seek 'evidence of a male culture of violence in an historically specific setting and to locate sexual violence in a context of violence against women more generally'.³⁴ This argument refined Brownmiller's as it proposed a more rigorous historical analysis of power relations, to which recent authors have been paying attention. However, all these frameworks excluded male victims of sexual assault by focusing exclusively on men as perpetrators and women as victims.

³¹ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Simon and Schuster, 1975), 13.

³² Edward Shorter, 'On Writing the History of Rape', *Signs: Journal of Women in Culture and Society* 3, no. 2 (1977): 471-482.

³³ Roy Porter, 'Rape - Does It Have a Historical Meaning?', in *Rape: An Historical and Cultural Enquiry*, ed. Sylvana Tomaselli and Roy Porter (Oxford: Basil Blackwell, 1986).

³⁴ Shani D'Cruze, 'Approaching the History of Rape and Sexual Violence: Notes towards Research', *Women's History Review* 1, no. 3 (1992): 382-87.

Against Our Will stimulated further research on sexual violence.³⁵ As with research on interpersonal violence, criminal records formed the basis of many studies; so much of our knowledge is only visible as a matter of criminality.³⁶ Indeed, D'Cruze made the important point that historical study of sexual violence is 'necessarily a discourse on and around the surviving evidences, not an unmediated description of "what happened"'.³⁷ Therefore, methodologies have focused predominantly on analysis of criminal records and court documents, as, indeed, in the present thesis. Gammon notes a legal narrative bias in research, as well as a metropolitan one.³⁸

Marital sexual violence has been a productive area of research and shares many difficulties with the present thesis, especially the difficulties of recovering evidence. As such, historians have inferred sexual abuse from other sources, mostly focusing on the nineteenth century, and largely from the legal domain. Hammerton looked at cases of legal cruelty, noting that evidence of marital rape was often supplemented by other abuses, such as beating, or knowingly transmitting venereal disease on an unknowing wife – the last of which was sufficient to establish a charge of legal cruelty on its own.³⁹ Savage looked at divorce courts and argued that women used them to showcase sexual cruelty from their husbands, which aside from forced sexual intercourse also included the 'use of condoms, demands for sex during the wife's menstrual cycle, masturbation, oral sex, bestiality, and sodomy'.⁴⁰ Both Savage and Hammerton showed that evidence of sexual violence can be found in a variety of sources and offences. Similarly, the current study has also located evidence of male on male sexual violence in several sources and a wide variety of offences, prosecuted throughout the criminal justice system.

³⁵ Carolyn Conley, 'Sexual Violence in Historical Perspective', in *The Oxford Handbook of Gender, Sex, and Crime*, ed. Rosemary Gartner and Bill McCarthy (Oxford: Oxford University Press, 2014): 191–205.

³⁶ Shani D'Cruze, 'Sexual Violence in History; a Contemporary Heritage?', in *Handbook of Sexual Violence*, ed. S. Walklate and J. Brown (London: Routledge, 2011), 23.

³⁷ D'Cruze, 'Approaching', 379.

³⁸ Julie Gammon, 'Researching Sexual Violence, 1660-1800: A Critical Analysis', in *Interpreting Sexual Violence, 1660-1800*, ed. Anne Leah Greenfield (London: Routledge, 2015), 22.

³⁹ Hammerton, *Cruelty and Companionship*, 103–4; See also his earlier article, 'Victorian Marriage and the Law of Matrimonial Cruelty'.

⁴⁰ Gail L. Savage, "'...The Instrument of an Animal Function': Marital Rape and Sexual Cruelty in the Divorce Court, 1858-1908', in *The Politics of Domestic Authority in Britain since 1800*, ed. L. Delap, B. Griffin, and A. Wills (London: Palgrave Macmillan, 2009), 47–48.

Other scholars have gone further, investigating several other offences.⁴¹ For instance, Bourke deduced that it is reasonable to assume that wives used evidence of physical assault to punish sexually abusive husbands, even when they did not state so explicitly.⁴² Moreover, a materialist analysis contributes much to understandings of marital rape. Researchers have emphasised the presence of assaults in bedrooms, which suggests ‘an obvious sexual battleground’.⁴³ Begiato built on this more recently and demonstrated that spaces and objects were not just an extension of marital abuse but a target in and of themselves due to their associations with femininity and the domestic, in an application of the concept of materiality to evidence of marital violence.⁴⁴

As can be seen, scholars of sexual violence in marriage had difficulties in the uncovering of evidence and the “dark figure” of crime, a problem shared with the current thesis.

Moreover, the legality of rape within marriage has made research especially difficult since sexual violence becomes even more hidden. Nonetheless, historians have found ways to recover evidence – in cases of cruelty, divorce court sources, inferences from narratives.

A major concern to appear out of the study of sexual violence is the social significance of the concept of respectability and the role this played in the occlusion of sexual violence, issues which are highly relevant to the present thesis. Before the late eighteenth century, respectability essentially referred to high status or gentility, but then became infused with emphasis on character or morality.⁴⁵ For instance, several historians have stressed that independence was key for the working classes.⁴⁶ Respectability was important in cases of

⁴¹ Finch notes that in medieval law, ‘assault’ could include rape, Andrew John Finch, ‘The Nature of Violence in the Middle Ages: An Alternative Perspective’, *Historical Research* 70, no. 173 (1997): 243–68; Nazife Bashar, ‘Rape in England between 1550 and 1700’, in *The Sexual Dynamics of History*, ed. London Feminist History Group (London: Pluto, 1983); Karen Jones, *Gender and Petty Crime in Late Medieval England: The Local Courts in Kent, 1460–1560* (Rochester, NY: Boydell Press, 2001); and Conley notes the predominance of the offence of indecent assault in the nineteenth century, which had less stringent rules of evidence and was easier to obtain compensation from over other offences, Carolyn Conley, ‘Rape and Justice in Victorian England’, *Victorian Studies* 29, no. 4 (1986): 519–36.

⁴² Joanna Bourke, ‘Sexual Violence, Marital Guidance, and Victorian Bodies: An Aesthesiology’, *Victorian Studies* 50, no. 3 (2008): 421.

⁴³ Hammerton, *Cruelty and Companionship*, 103; See also Shani D’Cruze, *Everyday Violence in Britain 1850–1950: Gender and Class* (Harlow: Longman, 2000), 17; Foyster, *Marital Violence*.

⁴⁴ Joanne Begiato [Bailey], ‘Beyond the Rule of Thumb: The Materiality of Marital Violence in England c. 1700–1857’, *Cultural and Social History* 15, no. 1 (2018): 11–12.

⁴⁵ Woodruff Smith, *Consumption and the Making of Respectability, 1600–1800* (Oxon: Routledge, 2002), 189–221.

⁴⁶ Geoffrey Crossick, ‘The Labour-Aristocracy and Its Values: A Study in Mid-Victorian Kentish London’, *Victorian Studies* 19, no. 3 (1976): 301–28; Robert Gray, *The Aristocracy of Labour in Nineteenth-Century*

rape, and has been a chief focus for researchers. Some have concluded that the strict circumstances of the assault were less important than character and conduct.⁴⁷ However, it was in the courtroom that a woman lost her respectability in the fact that she had to talk plainly about the assault, thereby violating the terms of female modesty.⁴⁸ Historians have also noted how ideals of respectability stopped women from disclosing sexual assaults, especially those of the higher classes.⁴⁹ As such, evidence of sexual violence became more hidden.

As for the perpetrators, respectable men rarely appeared in court records of rape. Conley illustrated in an analysis of rape records in the county of Kent in the mid-nineteenth century that when an accused rapist was 'respectable', the courts sought to preserve his status. Conviction did not necessarily harm a man's reputation; only being jailed for sexual assault could.⁵⁰ Analysis of the few upper-class men convicted of rape show that other factors were often involved.⁵¹ However, the concept of respectability has been challenged by Peter Bailey who argued that it was context-specific, and 'practised in a more limited and situational sense than that of a lived ideal or permanent code of values' than has been recognised.⁵² More recently, its power has been questioned; 'It may be that we have taken respectability

Britain, c.1850-1900 (London: The Macmillan Press, 1981), 37–38; Lynn MacKay, *Respectability and the London Poor, 1780–1870: The Value of Virtue* (London: Pickering & Chatto, 2013), 8.

⁴⁷ Shani D'Cruze, 'Sex, Violence and Local Courts: Working-Class Respectability in a Mid-Nineteenth-Century Lancashire Town', *The British Journal of Criminology* 39, no. 1 (1999): 39–55; Kim Stevenson, 'Unequivocal Victims: The Historical Roots of the Mystification of the Female Complainant in Rape Cases', *Feminist Legal Studies* 8, no. 3 (2000): 343–66.

⁴⁸ Clark, *Women's Silence, Men's Violence*, 69.

⁴⁹ Clark, *Women's Silence, Men's Violence*; Conley, 'Rape and Justice in Victorian England'; Stevenson, 'Unequivocal Victims'.

⁵⁰ Conley, 'Rape and Justice in Victorian England', 529; Carolyn Conley, *The Unwritten Law; Crime and Justice in Victorian Kent* (Oxford: Oxford University Press, 1991).

⁵¹ Herrup shows how the Earl of Castlehaven's conviction in 1631 was not due to the sexual abuse of his wife or his acts of sodomy, but rather the way in which contemporary views of household order implicated with these acts were turned upside down. Furthermore, perceptions of the case changed over the centuries, with sodomy being focused on much more as time went on, Cynthia Herrup, 'The Patriarch at Home: The Trial of the 2nd Earl of Castlehaven for Rape and Sodomy', *History Workshop Journal* 41, no. 1 (1996): 1–18; Cynthia Herrup, *A House in Gross Disorder: Sex, Law, and the 2nd Earl of Castlehaven* (Oxford: Oxford University Press, 2001); Simpson studies a famous trial in the eighteenth century and shows how Francis Charteris was demonised because of his betrayal of the social and political values of his class, Anthony Simpson, 'Popular Perceptions of Rape as a Capital Crime in Eighteenth-Century England: The Press and the Trial of Francis Charteris in the Old Bailey, February 1730', *Law and History Review* 22, no. 1 (2004): 27–70.

⁵² Peter Bailey, "'Will the Real Bill Banks Please Stand up?' Towards a Role Analysis of Mid-Victorian Working-Class Respectability', *Journal Of Social History* 12, no. 3 (1979): 338.

at face value and interpreted it too literally', assesses Crone.⁵³ Despite these critiques, the concept has been an important filter in understanding sexual violence between men, especially in the narratives of victims and perpetrators.

A seminal work on sexual assault in the late eighteenth and nineteenth centuries was Clark's *Women's Silence, Men's Violence*, which epitomised the concepts of gender and class. The early nineteenth century saw what she called the prevalence of the 'protection racket' of rape, 'when sexual danger increasingly became the excuse to restrict women's freedom'.⁵⁴ Clark argued that the emergence and dominance of middle-class ideologies emphasised the preservation of women's chastity, and so the restriction of their sexuality. Women were thus only safe in the protection of their own home. Over time, women had their ability to speak about sex reduced, and thus also sexual violence. It was already difficult for women to speak out; this increased with the onset of medical experts in courtrooms. The rape victim 'was defined as immoral and deceitful: not only did she violate the principles of feminine modesty, but she usurped the privilege of masculine experts to define sexual crime'.⁵⁵ Clark has been criticised for her periodisation, as well as for not looking at cross-class masculinity.⁵⁶ Nevertheless, it is an important and convincing work in the history of sexual violence, successfully combining the two major concepts of gender and class with agency.

Where earlier studies focused on the victims of rape, more recent studies have considered the role of the perpetrator, and their narratives form an important part of the current thesis. Gammon noted the lack of perspectives on those accused.⁵⁷ The rapist has been a difficult figure to study, and the ways in which he contributed to patriarchy have been debated. Clark proposed that rape was (and is) 'the extreme expression of a socially-constructed masculine sexuality'.⁵⁸ Hence, sexual violence reinforces patriarchy by asserting male physical and sexual superiority. On the other hand, Bourke has more recently argued that rapists actually subvert and threaten masculine governance by exposing the weaknesses of extreme masculinity; 'Rapists are not patriarchy's "storm troopers", but its

⁵³ Rosalind Crone, *Violent Victorians: Popular Entertainment in Nineteenth-Century London* (Manchester: Manchester University Press, 2012), 265.

⁵⁴ Clark, *Women's Silence, Men's Violence*, 2.

⁵⁵ Clark, 69.

⁵⁶ D'Cruze, 'Approaching', 379.

⁵⁷ Gammon, 'Researching Sexual Violence', 22.

⁵⁸ Clark, *Women's Silence, Men's Violence*, 34.

inadequate spawn'.⁵⁹ Whether sexual violence actually served to help or hinder patriarchy is still open to interpretation. However, again, neither of these arguments considered the perpetrator as a man sexually assaulting another man.

Walker has recently stated in one of the few studies of the rapist that historians struggle to reconcile social constructionist perspectives of rapists because they appear to be trans-historical. She argues that historians tend to slip into identifying the rapist as either a sadistic figure, *a la Shorter*, or as potentially any man, *a la Brownmiller*; thus, the difficulties of definition are unstable and identification is complex.⁶⁰ This was indeed so for contemporary people, where the identification of a perpetrator of rape as a monster or as a normal man who lost control can be seen concurrently. However, she noted that by the end of the eighteenth-century rapists were viewed more as 'aberrants', fundamentally different to normal men.⁶¹ The ways in which contemporaries viewed rapists were multi-layered and various interpretations could be possible at any time.

A consequence of feminist-inspired work on sexual violence has been the forefront of the concept of agency, and especially the foregrounding of the victim, a theme this thesis continues by investigating their narratives. Most studies of sexual violence in history have taken the victims as their main focus. Clark stated that although surviving sources such as criminal records and newspaper reports were inherently biased, it is important to use them, 'for the alternative is to leave these women's voices silenced'.⁶² The same can be said for male victims. Furthermore, scholars have attempted to emphasise women's agency. Despite difficulties 'in choosing to tell her story...a woman resisted annihilation...women found ways to exercise their agency – albeit a limited agency – even in the most unpropitious of circumstances'.⁶³ However, D'Cruze more recently stated it is important to separate emotional or political reactions to sexual violence from historical analysis; being somewhat more cautious than her earlier work.⁶⁴

⁵⁹ Joanna Bourke, *Rape: Sex, Violence, History* (Emeryville, CA: Shoemaker & Hoard, 2007), 415.

⁶⁰ Garthine Walker, 'Everyman or a Monster? The Rapist in Early Modern England, c.1600–1750', *History Workshop Journal* 76, no. 1 (2013): 7–8.

⁶¹ Walker, 26.

⁶² Clark, *Women's Silence, Men's Violence*, 15.

⁶³ Garthine Walker, 'Rereading Rape and Sexual Violence in Early Modern England', *Gender and History* 10, no. 1 (1998): 19–20.

⁶⁴ Shani D'Cruze, 'Sexual Violence in History; a Contemporary Heritage?', in *Handbook of Sexual Violence*, ed. S. Walklate and J. Brown (London: Routledge, 2011): 25.

Another way the victim has been placed centrally is in the question of consent, an important notion that was integral in devising the method to uncover evidence of sexual violence between men. Greenfield used a modern, ungendered, definition of consent to interpret historical sexual violence, 'sex without the consent of one party', but notes that contemporaries did not use the same definitions as today. Consent is hence a historically specific construction in the interpretation of sexual violence. Indeed, in the Restoration and eighteenth centuries a more common definition was heterosexual penetrative intercourse with a chaste woman; rape was the taking or stealing of chastity.⁶⁵ Conley utilised the notion of class to show that in her selection of court cases from the Victorian period rape was defined 'as a brutal act of violence usually committed in a public place on an apparently respectable woman who was previously unknown to her assailant and had done nothing even to acknowledge his presence'.⁶⁶ In the research for this thesis, consent was a crucial filter in separating willing partners of sex between men from acts where consent was absent.

Sexual encounters between men and boys have received attention. Several historians have noted the appearance of boys in court records and newspaper accounts of homosexuality in the period of study.⁶⁷ For instance, Gollapudi explored sodomy trials involving boys at the eighteenth-century Old Bailey, and concluded that such cases had more in common with rape cases involving underage girls than sodomy prosecutions between adult men.⁶⁸ However, research has tended to focus on the later nineteenth-century and the sexual abuse of girls. In Jackson's study of Victorian England boys only featured in 7% of cases she uncovered. She argued that this was partially due to boys not knowing the sexual acts were a crime.⁶⁹ Pavlakis examined allegations of sexual abuse involving boys in later Victorian

⁶⁵ Anne Leah Greenfield, ed., *Interpreting Sexual Violence, 1660–1800* (London: Routledge, 2015); For a legal analysis, see Julia Rudolph, 'Rape and Resistance: Women and Consent in Seventeenth-Century English Legal and Political Thought', *Journal of British Studies* 39, no. 2 (2000): 157–84.

⁶⁶ Conley, 'Rape and Justice in Victorian England', 525.

⁶⁷ Harry Cocks, *Nameless Offences: Homosexual Desire in the Nineteenth Century* (London: I. B. Tauris, 2003); Charles Upchurch, *Before Wilde: Sex Between Men in Britain's Age of Reform* (London: University of California Press Ltd, 2009).

⁶⁸ Aparna Gollapudi, 'The Disordered Fundament: Sexual Violence on Boys and Sodomy Trial Narratives in the Old Bailey Proceedings,' in *Interpreting Sexual Violence, 1660–1800*, ed. Anne Leah Greenfield (London: Routledge, 2015).

⁶⁹ Louise A. Jackson, *Child Sexual Abuse in Victorian England* (London: Routledge, 2000), 4, 100, 102.

Manchester, contextualising them within shifting conceptions of childhood and character.⁷⁰ Moreover, Fisher and Funke have noted the crucial role that age played in shaping modern understandings of homosexuality.⁷¹ Many historians have argued that lack of research is partially due to modern queer politics and attempts to distance homosexuality from paedophilia.⁷² Cleves, in her biography of Norman Douglas, also identifies a visceral reluctance to talk about it, as it is an uncomfortable and discomfiting topic.⁷³ Therefore, literature on sexual relations between men and boys has received some, albeit limited, consideration.

Indeed, while men have been considered as perpetrators of sexual violence against women and children, they have rarely been seen as perpetrators of sexual violence against other men, or as victims of sexual violence. Brownmiller included a chapter on homosexual rape, though focused only on contemporary prisons, as many others did.⁷⁴ Norton, writing about prosecutions for sodomy at the Old Bailey in the eighteenth century, asserted that coercion was an element introduced by the legal system in order to misrepresent consensual homosexual relations, and that 'genuine assaults involved no more than unwanted sexual solicitation'.⁷⁵ However, this has been criticised by Robertson for not taking power relations into account, and reifying myths such as that men cannot be raped.⁷⁶ A more recent study examined the sexual victimisation of male slaves in America.⁷⁷ This is also the only work to consider women sexually assaulting men, a significant gap in literature. Turner's recent work

⁷⁰ Dean Pavlakis, "Reputation and the Sexual Abuse of Boys: Changing Norms in Late-Nineteenth-Century Britain," *Men and Masculinities* 17, no. 3 (2014): 325–46.

⁷¹ Kate Fisher and Jana Funke, "The Age of Attraction: Age, Gender and the History of Modern Male Homosexuality," *Gender & History* 31, no. 2 (2019): 266.

⁷² S. M. Robertson, "What's Law Got to Do with It? Legal Records and Sexual Histories," *Journal of the History of Sexuality* 14, no. 1 (2005): 161–85; Rachel Hope Cleves, "The Problem of Modern Pederasty in Queer History," *Historical Reflections/Réflexions Historiques* 46, no. 1 (2020): 47–61.

⁷³ Rachel Hope Cleves, *Unspeakable: A Life beyond Sexual Morality* (London: The University of Chicago Press, 2020), 6–7.

⁷⁴ Brownmiller, *Against Our Will*; see Daniel Lockwood, *Prison Sexual Violence* (New York: Elsevier North-Holland, 1979).

⁷⁵ Rictor Norton, 'Recovering Gay History from the Old Bailey', *London Journal* 30, no. 1 (2005): 46.

⁷⁶ Stephen Robertson, 'Shifting the Scene of the Crime: Sodomy and the American History of Sexual Violence', *Journal of the History of Sexuality* 19, no. 2 (2010): 234.

⁷⁷ Thomas A. Foster, *Rethinking Rufus: Sexual Violations of Enslaved Men* (Athens: The University of Georgia Press, 2019).

has considered women as perpetrators of violence against men in the late nineteenth century, although not sexual assaults.⁷⁸

What is clear from this review is that existing histories of sexual violence have not fully considered male victims of sexual violence or men sexually assaulting other men. This thesis addresses these omissions by recovering evidence of sexual violence from court records and newspaper coverage, analysing its place in the criminal justice system, the 'actuality' of the violence suffered, and its representation within the sources consulted. Furthermore, it builds on and expands the current literature by considering men as both victims and perpetrators of sexual violence.

Sexual Relations Between Men

Evidently, an investigation of male on male sexual violence must be situated within scholarship on male homosexuality, a subject of much debate. It should be noted that literature focussing on the history of homosexuality is heavily weighted towards research into male/male sexual relations, limiting lesbian and bisexual perspectives.⁷⁹ The following review summarises several trends, namely, perspectives on the presence or lack of an identifiable homosexual identity, the predominance of legal perspectives, and, most importantly, how studies have neglected the question of consent.

Traditionally, records of sexual relations between men have been used to debate the issue of a homosexual identity, hotly contested in historiography. Until the 1960s, historians tended to treat sexuality as a natural and biological force, an essential part of being that was unchanging. This altered in the 1960s and 1970s with studies that focused on sexual behaviour without asserting a modern sexual identity before the medicalisation of homosexuality in the late nineteenth century.⁸⁰ However, not all historians agreed with the

⁷⁸ Jo Turner, "'A Shocking State of Domestic Unhappiness': Male Victims of Female Violence and the Courts in Late Nineteenth Century Stafford", *Societies* 9, no. 2 (2019): 40.

⁷⁹ For an innovative work of lesbian desire see Martha Vicinus, *Intimate Friends: Women Who Loved Women, 1778-1928* (Chicago: Chicago University Press, 2004); on bisexuality, see Stephen Angelides, 'Historicizing (Bi)Sexuality: A Rejoinder for Gay/ Lesbian Studies, Feminism, and Queer Theory', *Journal of Homosexuality* 52, no. 1-2 (2006): 125-58.

⁸⁰ Mary McIntosh, 'The Homosexual Role', *Social Problems* 16, no. 2 (1968): 182-92; Jeffrey Weeks, *Coming Out: Homosexual Politics in Britain from the Nineteenth Century to the Present* (London: Quartet Books, 1977); Michel Foucault, *The History of Sexuality* (New York: Vintage Books, 1988).

view that sexuality was socially constructed; the 'essentialist' camp continued to assert that sexuality was a natural phenomenon, an integral part of identity that has existed throughout history.⁸¹ Essentialist historians often used the presence of effeminacy in men as evidence for their arguments.⁸² However, the appropriateness of effeminacy as an indicator of sexual difference has been questioned by others.⁸³

The turn of the twenty-first century witnessed a paradigm shift in histories of homosexuality, as many scholars have noted.⁸⁴ Recent historians have focused less on the question of identity and more on the individual nature of sexuality, with various sites of same-sex desire, ignoring or side-lining the traditional focus on identity.⁸⁵ Indeed, the social constructionist argument 'forms the basis of most scholarship today', according to two prominent historians of homosexuality.⁸⁶ The present thesis follows these recent trends by disregarding the issue of identity (for example, whether victims or perpetrators identified as homosexual or not) and focusing on the 'actuality' of sexual assault, such as in the locations where it was alleged to have occurred.

⁸¹ John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (Chicago: University of Chicago Press, 1980); 'Revolutions, Universals and Sexual Categories', in *Hidden from History: Reclaiming the Gay and Lesbian Past*, ed. Martin Baumi Duberman, Martha Vicinus, and George Chauncey (London: Penguin, 1991); Michael Young, *King James and the History of Homosexuality* (New York: New York University Press, 1999); Rictor Norton, *Mother Clap's 'Molly' House: The Gay Subculture in England 1700-1830* (London: Gay Men's Press, 1992).

⁸² Norton, *Mother Clap's 'Molly' House*; Randolph Trumbach, 'London's Sodomites: Homosexual Behaviour and Western Culture in the 18th Century', *Journal of Social History* 11, no. 1 (1977): 1–33; 'Sex, Gender, and Sexual Identity in Modern Culture: Male Sodomy and Female Prostitution in Enlightenment London', *Journal of the History of Sexuality* 2, no. 2 (1991): 186–203; 'Modern Sodomy: The Origins of Homosexuality, 1700–1800', in *A Gay History of Britain: Love and Sex Between Men since the Middle Ages*, ed. Matt Cook (Oxford: Greenwood World, 2007); 'The Transformation of Sodomy from the Renaissance to the Modern World and Its General Sexual Consequences', *Signs* 37, no. 4 (2012): 832–48.

⁸³ Harry Cocks, 'Homosexuality between Men in Britain since the Eighteenth Century', *History Compass* 5, no. 3 (2007): 865–89; Elizabeth Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage* (London: Longman, 1999), 56.

⁸⁴ Chris Waters, 'Distance and Desire in the New British Queer History', *GLQ: A Journal of Lesbian and Gay Studies* 14, no. 1 (2007): 139–56; Barry Reay, 'Writing the Modern Histories of Homosexual England', *The Historical Journal* 52 (2009): 213–33; Victoria Harris, 'Sex on the Margins: New Directions in the Historiography of Sexuality and Gender', *The Historical Journal* 53, no. 4 (2010): 1085–1104; Andrew E. Clark-Huckstep, 'The History of Sexuality and Historical Methodology', *Cultural History* 5, no. 2 (2016): 179–99.

⁸⁵ Cocks, *Nameless Offences*; Matt Cook, *London and the Culture of Homosexuality, 1885-1914* (Cambridge: Cambridge University Press, 2003); Matt Houlbrook, *Queer London: Perils and Pleasures in the Sexual Metropolis, 1918-1957* (Chicago: Chicago University Press, 2005); Morris Kaplan, *Sodom on the Thames: Sex, Love, and Scandal in Wilde Times* (Ithaca: Cornell University Press, 2005).

⁸⁶ Sean Brady and Mark Seymour, 'From Sodomy Laws to Same-Sex Marriage: Historical Transformations', in *From Sodomy Laws to Same-Sex Marriage: International Perspectives since 1789* (London: Bloomsbury Academic, 2019), 2.

Much evidence of male homosexuality – as with interpersonal violence and sexual assault – has been recovered from criminal records, in offences such as sodomy, for example. Court records and witness statements may have contained sometimes lengthy descriptions of behaviour from a variety of perspectives; the law, witnesses, medicine, for instance. Hence, many historical studies have utilised a legal perspective, often taking London as their geographical focus.⁸⁷ Furthermore, several historians have noted how legal structures were not passive, but generated and articulated understandings of sodomy.⁸⁸ Another relevant offence is indecent assault, a misdemeanour used in the nineteenth century for heterosexual and homosexual acts which fell short of the evidence required for the prosecution of rape or sodomy. Like sodomy, it had a vague definition.⁸⁹ Cocks defined it as acts where consent was ‘ostensibly withheld’, though also notes it was often used as shorthand in legal documents to connote consenting sex, complicating the crime’s definition.⁹⁰ Both of these offences are the most obvious charges to contain cases of sexual violence between men, and have been especially fruitful in uncovering evidence. At the same time, scholars have questioned the predominance of legal evidence which can narrow perspectives.⁹¹

As with the studies of interpersonal violence outlined above, historians have attempted to measure fluctuations in the prosecution and sentencing of crimes relating to male homosexuality. For example, Bartlett found a lack of motivation for prosecuting sodomy but increased usage of the misdemeanour attempted sodomy in the eighteenth century, which carried less stringent rules of evidence.⁹² Furthermore, others have noted increases in

⁸⁷ Trumbach, ‘London’s Sodomites’; Weeks, *Coming Out*; Netta Murray Goldsmith, *The Worst of Crimes: Homosexuality and the Law in Eighteenth-Century London* (Aldershot: Ashgate, 1990); Norton, *Mother Clap’s ‘Molly’ House*; Cook, *London and the Culture of Homosexuality*; Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913* (Basingstoke: Palgrave Macmillan, 2005).

⁸⁸ Peter Bartlett, ‘Sodomites in the Pillory in Eighteenth-Century London’, *Social & Legal Studies* 6, no. 4 (1997): 553–72; Leslie Moran, *The Homosexual(ity) of Law* (London: Routledge, 1996); see also Cocks, *Nameless Offences*.

⁸⁹ A judge in 1875 stated that ‘I cannot lay down the law as to what is or is not indecent beyond saying that it is what all right-minded men would say was indecent’, quoted in Christine L. Krueger, ‘Naming Privates in Public: Indecent Assault Depositions, 1830-60’, *Mosaic: A Journal for the Interdisciplinary Study of Literature* 27, no. 4 (1994): 121.

⁹⁰ Cocks, *Nameless Offences*, 25–28.

⁹¹ Farid Azfar, ‘Genealogy of an Execution: The Sodomite, the Bishop, and the Anomaly of 1726’, *The Journal of British Studies* 51, no. 3 (2012): 571; Herrup, ‘The Patriarch at Home’, 15; Rictor Norton, ‘Recovering Gay History from the Old Bailey’, *London Journal* 30, no. 1 (2005).

⁹² Bartlett, ‘Sodomites in the Pillory in Eighteenth-Century London’; Brady argues the opposite for the late nineteenth into early twentieth century, Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*.

sodomy prosecutions around the turn of the nineteenth century, though differ in their explanations. Harvey argued that increased convictions was due to increased intolerance as a result of the hardening of sexual stereotypes, while in contrast Cocks emphasised that the problem of naming sodomy became much more acute at the beginning of the nineteenth century.⁹³ Furthermore, Cocks has demonstrated that prosecutions for sodomy went into a gradual decline from 1850 in consequence of the increased usage of indecent assault, since it was a more flexible charge than sodomy.⁹⁴ The present study will also measure cases of sexual violence between men and their journey through the criminal justice system, examining the offences where evidence has been found, patterns in prosecution, the verdicts given, as well as sentences and outcomes.

A common theme in the literature on sodomy has been the idea that sexual relations between men were incompatible with prevalent social norms, which affected the prosecution of and punishment for sexual relations between men, and hence sexual violence. For instance, Harvey suggested that ‘the *major* source of this hostility towards sexual deviancy was itself sexual neurosis’, emphasising sensational trials.⁹⁵ When discussing punishment for homosexuality, Weeks centred the context of social change, urbanisation, and changing role of the family.⁹⁶ Executions have especially been interpreted as evidence of cultural intolerance towards same-sex male relations – the last occurred in 1835 – which have been described by some as ‘pogroms’.⁹⁷ On the other hand Azfar finds this view unhelpful, and instead analysed executions from the perspective of the human actors involved, in response to the bias of this cultural argument.⁹⁸ Similarly, he also demonstrated

⁹³ Arnold D. Harvey, ‘Prosecutions for Sodomy in England at the Beginning of the Nineteenth Century’, *The Historical Journal* 21, no. 4 (1978): 939–48; Cocks, *Nameless Offences*, 7–24; See also *Visions of Sodom: Religion, Homoerotic Desire, and the End of the World in England, c.1550-1850* (Chicago: The University of Chicago Press, 2017).

⁹⁴ Cocks, *Nameless Offences*, 30. For a gendered analysis of depositions in records, see Krueger, ‘Naming Privates in Public’.

⁹⁵ Harvey, ‘Prosecutions for Sodomy’, 947.

⁹⁶ Weeks, *Coming Out; Sex, Politics and Society: The Regulations of Sexuality since 1800* (London: Longman, 1981).

⁹⁷ Trumbach, ‘London’s Sodomites’; Laurence Senelick, ‘Mollies or Men of Mode? Sodomy and the Eighteenth-Century London Stage’, *Journal of the History of Sexuality* 1, no. 1 (1990): 33–67; George. E. Haggerty, *Men in Love: Masculinity and Sexuality in the Eighteenth Century* (New York: Colombia University Press, 1999); Anthony Simpson, ‘Masculinity and Control: The Prosecution of Sex Offences in Eighteenth Century London’ (PhD Thesis, Michigan, University of Michigan, 1984), 704; Goldsmith, *The Worst of Crimes*, 8–9.

⁹⁸ Azfar, ‘Genealogy of an Execution’.

the importance of urbanity and the city in explaining fear of sodomy, in contrast to arguments which emphasise intolerance of effeminacy.⁹⁹

Outside of criminal records, newspaper reporting of criminal trials have been a useful source for the recovery of evidence of male homosexuality, and perspectives towards it, as in the current study.¹⁰⁰ Upchurch studied newspapers in London extensively for the period 1820-1870, distinguishing this period as 'lightly sketched' by historians.¹⁰¹ He found reports of sexual relations between men in a variety of newspapers including those for the middle and upper classes such as *The Times* and *Morning Post*. These newspapers were not silent on these matters as others have suggested.¹⁰² The present thesis builds on this work by examining the above papers plus the *Morning Chronicle*, *Lloyd's Weekly Newspaper*, and *Reynolds's Weekly Newspaper*.

Furthermore, as in literature on sexual violence against women explored above, respectability is an important social signifier in the recovery and occlusion of detail in newspaper coverage of male homosexuality.¹⁰³ Cocks has done much work in this regard, showing the prominence of class issues such as those present in studies of rape.¹⁰⁴ Furthermore, he has discussed the importance of this perspective against the overwhelming focus in sodomy literature on effeminacy.¹⁰⁵ As will be seen later, respectability is an important identifier not only when attempting to uncover cases of sexual assault, but in the construction of narratives by men accused of sexual assault.

With the exception of Cocks, the question of consent has rarely been considered when investigating male homosexuality. In an analysis of the age profile of sexual partners based on a sample of eighty-three cases from newspapers and criminal petitions in the nineteenth

⁹⁹ Farid Azfar, 'Beastly Sodomites and the Shameless Urban Future', *The Eighteenth Century* 55, no. 4 (2014): 391-410.

¹⁰⁰ Cocks, *Nameless Offences*; Daniel J. R. Grey, "'Monstrous and Indefensible'? Newspaper Accounts of Sexual Assaults on Children in Nineteenth-Century England and Wales', in *Women's Criminality in Europe, 1600-1914*, ed. Manon van der Heijden, Marion Pluskota, and Sanne Muurling (Cambridge: Cambridge University Press, 2020), 189-205.

¹⁰¹ Charles Upchurch, *Before Wilde: Sex Between Men in Britain's Age of Reform* (London: University of California Press Ltd, 2009), 17.

¹⁰² Upchurch, *Before Wilde*; Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913*, 55, 233.

¹⁰³ See above, 7-8, for general literature on the concept of respectability.

¹⁰⁴ Cocks, 'Trials of Character', 6-53; for an important work on the rape of women, see Carolyn Conley, 'Rape and Justice in Victorian England', *Victorian Studies* 29, no. 4 (1986): 519-36.

¹⁰⁵ Cocks, 'Safeguarding Civility'.

century, Cocks deduced that many men who appeared in court records for sodomy and indecent assault were not consenting partners, but victims of sexual assault. However, Cocks' focus was more on the broader considerations of sodomy rather than an analysis of the victimisation of men. Across the Atlantic, Robertson demonstrated the importance of perceiving sodomy through the lens of sexual violence. He explained that while US statute law was not created specifically to outlaw sexual violence but all non-procreative activity, there was an awareness of sodomitical violence and that victims who were 'crying out, or in due season complaining' were exempt from punishment.¹⁰⁶ However, as in England, few historians have specifically singled out sexual violence as a perspective to view cases of sodomy, and the difficulty in identifying consent compounds this.

Historians have examined evidence of sexual relations between men, including sexual violence, in specific institutions. For instance, Gilbert used records of naval court martial to recite a Freudian analysis which rested on the association between anality and death, and also proposed that most convictions in the early years of the Napoleonic Wars were for homosexual rape, whereas the latter years showed increased concern with consensual sodomy – though Gilbert did not state how he distinguished the two.¹⁰⁷ Burg has more recently uncovered sexual assaults, noting a contemporary awareness that boys could be forced to have sex against their will, and relaying one case of a black man being put ashore for attempting to rape his sleeping captain, the only case where one man attempted sodomy with another above his own rank.¹⁰⁸ Another institution which has seen work on sexual relations between men is the prison. Bethell explored the fear prison authorities held regarding the possibility of sex between men, and the contaminating influence men convicted of sodomy were thought to possess. Whether unnatural acts were consensual or not made no difference in the minds of convict officials, and he also noted the lack of

¹⁰⁶ Robertson, 'Shifting the Scene of the Crime', 231.

¹⁰⁷ Arthur N. Gilbert, 'Buggery and the British Navy, 1700-1861', *Journal of Social History* 10, no. 1 (1976): 72–98; 'Sexual Deviance and Disaster during the Napoleonic Wars', *Albion: A Quarterly Journal Concerned with British Studies* 9, no. 1 (1977): 98–113.

¹⁰⁸ Barry Richard Burg, 'Officers, Shipboard Boys and Courts Martial for Sodomy and Indecency in the Georgian Navy', in *The Social History of English Seamen 1650-1815*, ed. Cheryl Fury (Woodbridge: The Boydell Press, 2017), 91; *Boys at Sea: Sodomy, Indecency, and Courts Martial in Nelson's Navy* (Basingstoke: Macmillan, 2007), 131; See also Mary Conley, 'The Admiralty's Gaze: Disciplining Indecency and Sodomy in the Edwardian Fleet', in *A New Naval History*, ed. Quinton Colville and James Davey (Manchester: Manchester University Press, 2018).

specific evidence for prison sex, aside from a few memoirs.¹⁰⁹ Similarly, DeLacy has noted the absence of reports homosexual rape in 18th and 19th century prisons, arguing that this lack of reporting ‘bears some relation to reality’.¹¹⁰ What these studies show is the varying contexts in which male on male sexual violence might occur, and that consent is an important issue to consider when interpreting male homosexuality.

The above literature review has shown that interpersonal violence, sexual assaults against women, and male homosexuality have been popular topics of research. However, sexual violence perpetrated by men on adult male victims has fallen between this work. This thesis differs from and builds upon existing historiography by utilising court records and newspaper reports to uncover and analyse evidence of male on male sexual violence committed in London in the late eighteenth and nineteenth centuries. This period is significant, especially in attitudes towards violence and sexuality, prosecution and punishment, as well as rapid urbanisation. The review has also exposed several themes which are explored in this thesis, such as fluctuations in the prosecution and reporting of sexual violence between men in the sources discussed, the narratives of victims and perpetrators, and discourse surrounding male on male sexual violence. What follows is an examination of the questions that inform this research.

Research Questions

The overarching questions for this project were: how can evidence of non-consensual homosexual acts be unearthed and separated from consensual ones, in a period when all homosexual activity was criminalised? Once found, what can it tell us about the incidence, patterns, and discourses surrounding male on male sexual violence between 1761-1861? This is a rich period for such a study; the opening year was chosen as the starting point due to the reporting of a prominent case of forced penetration in the *Old Bailey Proceedings*, and concludes with the removal of the death penalty for sodomy.

¹⁰⁹ Ben Bethell, ‘Defining “Unnatural Crime”: Sex and the English Convict System, 1850-1900’, in *From Sodomy Laws to Same-Sex Marriage: International Perspectives since 1789*, ed. Sean Brady and Mark Seymour (London: Bloomsbury Academic, 2019); ‘The “Star Class” in English Convict Prisons, 1863-1914’ (PhD, Birkbeck, University of London, 2020).

¹¹⁰ DeLacy, *Prison Reform in Lancashire*, 200.

The second level of questions examine the method employed to uncover evidence of sexual violence. In what offences has it been found, and at what courts were prosecutions heard? This leads to questions of reporting across the period under study, and how these fluctuated over time in terms of prosecution rates in the surviving evidence. Furthermore, what did the courts think of such acts, and did any particulars affect verdicts and sentencing? Were men convicted of offences involving sexual violence treated differently than cases not involving sexual violence in terms of post-trial outcomes?

Next is discourse and representation of sexual violence in the sources consulted. What terminology was used to signify that sexual acts between men were not consensual, how did these words and phrases change across the period, and how did the vocabulary differ from consensual acts? Attention will also be given to victims and perpetrators, and it is asked how they constructed their narratives. Historiography has focused overwhelmingly on women and children as victims of sexual violence, and this thesis will shift the focus onto adult male victims. For example, how did they describe the assaults, and what elements did they prioritise? The thesis also follows recent research on the perpetrators of sexual violence, and asks, how did they defend themselves from accusations of assaults? What did they refer to in their defence?

The final set of questions concern the 'actuality' of sexual violence. What types of sexual violence did men suffer in the period? Furthermore, what were the types of locations and areas of sexual assaults? Research has shown that specific locations have a history of male homosexuality, such as specific parks and streets. Were sexual assaults clustered in these areas, or did they happen anywhere? In a similar vein, the timing of these assaults is considered. Did they tend to be committed at certain times, on specific days, months, and even seasons? Also important are the men involved. Were victims and perpetrators of similar ages and social backgrounds, or were assaults committed across age and class lines?

Method and offences are the focus of Chapter Two, with the courts and courtroom expounded in Chapter Three. Thereafter, discourse and representation concern Chapter Four, and 'actuality' is the preserve of Chapter Five. Lastly, what happened to the prosecutions in terms of verdicts, sentences, and outcomes is analysed in Chapter Six.

Sources

Historians of male homosexuality in the eighteenth and nineteenth centuries have unearthed evidence in many sources. For example, there are bodies of institutional sources where instances of male on male sexual violence might be recovered, such as prison punishment books and Navy court martial records. However, focus here is on courts within the civil sphere. This thesis is based on 244 unique cases of sexual violence from the civil sphere of London between 1761-1861 extracted from the following sources: the Middlesex and Westminster Sessions Papers, *Old Bailey Proceedings*, and five newspapers. All cases were prosecutions, some for sexual offences but also others, and all included an accusation of sexual violence.

Depositions from victims have been used as the primary means for determining sexual violence. The source of depositions came from the London Metropolitan Archives. Two collections were consulted, the Middlesex (1549-1903), and Westminster (1826-1844), Sessions of the Peace Sessions Papers. Witness statements from victims are held within these collections. Depositions in the Middlesex papers are catalogued and searchable until 1836, after which they are mostly uncatalogued, and number 1519 bundles of 201 linear feet, with the majority outside the scope of this thesis in the 1870s and 1880s. Each bundle contains about 50 cases, with each case being around 4-5 pages in length. The same can be said for the Westminster bundles, but which are much fewer in number, 25 bundles total, with slightly less than half in 1843 and 1844 alone. In the latter year they were subsumed by the Middlesex Sessions.

As the voices of the victims involved, with descriptions of alleged crimes, they have been used to identify non-consensual acts. Statements by witnesses have also been useful to supplement and give credence to the narratives of victims – or to negate them. In addition, depositions of supposed perpetrators were occasionally present, which were important in giving the other ‘side’. Depositions are rich sources for the current study as they contained ‘facts’ which are necessary to identify consent and are generally fairly detailed. However,

they were at least to some degree ‘filtered through the written hand of the authorities’, either literally or by their nature as legal documents.¹¹¹

In addition, the Proceedings of the Old Bailey (1674 – 1913, also known as the Sessions Papers or *Proceedings*) were extensively utilised. The *Proceedings* contained details of criminal court proceedings at London’s Central Criminal Court, mostly of capital cases and serious misdemeanours, and are available to search online. It was published each time the court sessions were conducted; eight times a year until 1834, when it included the City of London and Middlesex, and ten to twelve times thereafter, where it took up all of London and Middlesex as well as certain parts of Essex, Kent, Surrey.

While technically a newspaper, throughout the eighteenth century it was increasingly relied on by officials as an official source of criminal proceedings. It had aimed to report every trial held since 1730, at least minimally, and by the late eighteenth century the City of London Corporation required more detailed and accurate reporting of trials, as they were especially used for sentencing and pardoning purposes. By the end of the eighteenth century the length of individual accounts had increased significantly.¹¹² At the same time the City of London authorities began subsidizing its publication; outside of the legal profession its readership was probably small.¹¹³ The nineteenth century witnessed the expansion of the jurisdiction of trials covered in the *Proceedings* following the creation of the Central Criminal Court in 1834. By this time, it had few paying subscribers, and had taken on ‘an entirely formal character’.¹¹⁴

The *Proceedings* are an invaluable record of crime and criminality. Langbein calls them ‘probably the best accounts we shall ever have of what transpired in ordinary English criminal courts before the later eighteenth century’.¹¹⁵ At the same time, Shoemaker has shown they contained selective reporting, often focusing on cases of guilty verdicts, giving

¹¹¹ Wood, *Violence and Crime*, 11.

¹¹² Simon Devereaux, ‘The City and the Sessions Paper: “Public Justice” in London, 1770-1800’, *Journal of British Studies* 35, no. 4 (1996): 467–479; ‘From Sessions to Newspaper? Criminal Trial Reporting, the Nature of Crime, and the London Press, 1770-1800’, *The London Journal* 32, no. 1 (2007): 1.

¹¹³ Peter King, ‘Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London’, *Continuity and Change* 22, no. 1 (2007): 75.

¹¹⁴ Michael Harris, ‘London Newspapers’, in *The Cambridge History of the Book in Britain*, ed. Michael F. Suarez, SJ and Michael L. Turner (Cambridge: Cambridge University Press, 2009), 430.

¹¹⁵ John H. Langbein, *The Origins of the Adversary Criminal Trial* (Oxford: Oxford University Press, 2005).

the impression that criminality would be punished.¹¹⁶ Furthermore, Cairns noted that in early nineteenth century reports it is common to find 'the confused use of tenses, the juxtaposition of names, jumbled sense, and references to matters that do not appear elsewhere in the report'.¹¹⁷ Importantly, due to 'indecent' much fewer details on sexual crimes were published from the final decade of the eighteenth century beyond, becoming more of an indictment record than minutes of court proceedings.¹¹⁸ Nevertheless, non-sexual crimes were still reported in some detail, including cases which contained acts and accusations of sexual violence.

The sources discussed above were official in nature, which gives a one-dimensional view on sexual violence by relying on the official record. Indeed, Cairns noted that due to problems with the *Proceedings*, use of them should be supplanted with other sources.¹¹⁹ Hence, historical newspapers reporting on criminal trials have been used in tandem to negate some of these problems, and surface information that is not held in the official record, allowing comparisons to be made between sources.

Newspapers became the dominant form of print culture in the eighteenth century, and experienced tremendous expansion at the turn of the nineteenth, owing to changes in technology which gave rise to Sunday papers aimed at the working class.¹²⁰ Furthermore, developments in the postal service and railways allowed for news to spread faster than before.¹²¹ Coupled with an increasing population, the proportion of the reading public consuming these papers increased massively, and it cannot be forgotten that reading was often a communal rather than individual activity.¹²² Therefore, newspapers became an 'essential reference point in the daily lives of millions of people'.¹²³

¹¹⁶ Robert Shoemaker, 'The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London', *Journal of British Studies* 47, no. 3 (2008): 567.

¹¹⁷ David J.A. Cairns, *Advocacy and the Making of the Adversarial Criminal Trial 1800–1865* (Oxford: Oxford University Press, 1999), 10.

¹¹⁸ Cairns, *Advocacy and the Making of the Adversarial Criminal Trial*; Devereaux, 'The City and the Sessions Paper', 491.

¹¹⁹ Cairns, *Advocacy and the Making of the Adversarial Criminal Trial*, 10.

¹²⁰ Elizabeth Foyster, 'Introduction: Newspaper Reporting of Crime and Justice', *Continuity and Change* 22, no. 1 (2007): 9; Hannah Barker, *Newspapers, Politics, and English Society, 1695–1895* (New York: Longman, 2000), 30.

¹²¹ Denise Bates, *Historical Research Using British Newspapers* (Barnsley: Pen & Sword History, 2016), 14.

¹²² Mark Hampton, *Visions of the Press in Britain, 1850–1950* (Chicago: University of Illinois Press, 2004), 27.

¹²³ Aled Jones, *Powers of the Press: Newspapers, Power and the Public in Nineteenth Century England* (Aldershot: Scholar Press, 1996), 2.

Reports of crime and criminal justice were central to many newspapers. For instance, London police columns were especially popular from the late eighteenth century and were a staple not only of the metropolitan but the provincial press too.¹²⁴ Furthermore, the expansion of the police court system at this time meant greater access to reporters.¹²⁵ Around the turn of the nineteenth century around 10-15% of a paper's newshole (space not devoted to advertising) was dedicated to crime and criminal justice stories.¹²⁶ The majority of coverage was given to 'serious' crimes or those involving lethal violence, though statistically these were the least common to occur.¹²⁷ Other factors of newsworthiness included death, the presence of celebrities, drama, and a sexual context.¹²⁸ Shared content was a feature of London papers, though independent reporting increased by the turn of the nineteenth century.¹²⁹

Reporting was not always abundant, however. In the late eighteenth century most reports were brief and straightforward, often lacking any kind of resolution, though over time the length of coverage increased.¹³⁰ Moreover, over the course of the nineteenth century legal professionals came to be involved in reporting of crime stories in greater numbers, which allowed a more 'professional' approach to the presentation of crime and the criminal process.¹³¹ An important point of contention was the reporting of sexual offences. While newspapers could include considerable detail, Grey notes that 'Journalistic aversion to discussing sex crimes remained strong throughout the nineteenth century even in articles

¹²⁴ Katie Barclay, 'Stereotypes as Political Resistance: The Irish Police Court Columns, c.1820–1845', *Social History* 42, no. 2 (2017): 258.

¹²⁵ Sascha Auerbach, *Armed with Sword and Scales: Law, Culture, and Local Courtrooms in London, 1860–1913* (Cambridge: Cambridge University Press, 2021), 47.

¹²⁶ King, 'Newspaper Reporting'; 'Making Crime News: Newspapers, Violent Crime and the Selective Reporting of Old Bailey Trials in the Late Eighteenth Century', *Crime, Histoire & Sociétés / Crime, History & Societies* 13, no. 1 (2009): 91–116; Esther Snell, 'Discourses of Criminality in the Eighteenth-Century Press: The Presentation of Crime in The Kentish Post, 1717–1768', *Continuity and Change* 22, no. 1 (2007): 13–47.

¹²⁷ John Carter Wood, 'Crime News and the Press', in *The Oxford Handbook of the History of Crime and Criminal Justice*, ed. Paul Knepper and Anja Johansen (Oxford: Oxford University Press, 2016), 305; King, 'Making Crime News'.

¹²⁸ King, 'Making Crime News', 111.

¹²⁹ Harris, 'London Newspapers', 426; Devereaux, 'From Sessions to Newspaper?', 1–27.

¹³⁰ Foyster, 'Introduction: Newspaper Reporting of Crime and Justice', 10; Udo Fries, 'Crime and Punishment', in *Early Modern English News Discourse*, ed. Andreas H. Jucker (Amsterdam: John Benjamins Publishing Co, 2009), 29.

¹³¹ Judith Rowbotham, Kim Stevenson, and Samantha Pegg, *Crime News in Modern Britain Press Reporting and Responsibility, 1820–2010* (Basingstoke: Palgrave Macmillan, 2013), 21.

where this was integral to the report'.¹³² Censorship on the grounds of indecency, especially when concerning sexual activity between men, may have led to a lack of direct information concerning assaults, but can show interesting uses of language, such as euphemisms.¹³³

Caveats aside, newspaper reporting of criminal trials provided invaluable insight into male on male sexual violence. Five newspapers were mined using the digital resource 'British Newspapers 1600-1900' via Gale Primary Sources, including three dailies and two weeklies.¹³⁴ The *Morning Post* (1772 – 1937) was the leading upper-class newspaper of its day with a circulation of 4,500 in 1803, with law and police-court coverage expanding after the 1820s.¹³⁵ Similarly *The Times* (1785 – present), aimed more at the middle-class, led other papers and came to define nineteenth-century journalism.¹³⁶ In terms of circulation, it had a combined figure of 5,730 with its evening edition in 1822, but between 1854-1855 had grown massively to a circulation of 50,000-60,000.¹³⁷ The other paper was the *Morning Chronicle* (1789 – 1865), London's leading daily at the beginning of the nineteenth century and the first newspaper to gain a reputation for its parliamentary reports; circulation was 3,000 in 1803 and had stayed relatively the same with 3,180 in 1822.¹³⁸ All three papers devoted considerable space to reporting of police courts, especially from the 1820s.¹³⁹

Weeklies were also looked at, focusing on the final decades of the period under study. *Lloyd's Weekly Newspaper* (1842-1931) 'became the most successful of Victorian week-end journals', and its early editor was 'heavily committed to crime news'.¹⁴⁰ Circulation figures were 21,000 in 1843, which had grown to 49,000 in 1850 and nearly doubled five years later

¹³² Grey, "'Monstrous and Indefensible'?", 192–93; See also Kim Stevenson, 'Outrageous Violations: Enabling Students to Interpret Nineteenth Century Newspaper Reports of Sexual Assault and Rape', *Law, Crime and History* 4, no. 1 (2014): 36–61.

¹³³ This is the focus of Chapter Four, 91-108.

¹³⁴ Available (with a subscription) at *Gale Primary Sources*, <https://go.gale.com/ps/dispatchBasicSearch.do?userGroupName=tou&prodId=GDCS>, accessed 20 September 2020.

¹³⁵ Richard D. Altick, *The English Common Reader: A Social History of the Mass Reading Public, 1800-1900*, 2nd ed. (Columbus: Ohio State University Press, 1998), 392; Upchurch, *Before Wilde*, 26, 137.

¹³⁶ Altick, *The English Common Reader*, 394.

¹³⁷ Altick, 392, 394.

¹³⁸ Jones, *Powers of the Press*, 5, 55; Altick, *The English Common Reader*, 392.

¹³⁹ Auerbach, *Armed with Sword and Scales*, 91.

¹⁴⁰ Harold Herd, *The March of Journalism: The Story of the British Press from 1622 to the Present Day* (London: George Allen and Unwin Ltd, 1952), 185; Judith Knelman, 'Subtly Sensational : A Study of Early Victorian Crime Reporting', *Journal of Newspaper and Periodical History* 8, no. 1 (1992): 36.

to 96,000.¹⁴¹ The other was aimed at the lower-middle classes; *Reynolds's Weekly Newspaper* (1850 – 1967), which became one of the most widely read papers of England in the Victorian Period, and had a circulation of 49,000 in 1855.¹⁴² These two papers also contained a significant amount of police court columns.¹⁴³

Therefore, newspapers were not only being used to uncover more cases, in magistrate courts as well as the Middlesex and Westminster Sessions and Old Bailey, but also as an additional source of information on cases extracted from the above sources. In this way, it is possible to compare why some sources revealed more cases and detail than others.

While court records and newspaper reporting were the main sources used to recover instances of male on male sexual violence, additional sources were also consulted by searching the names of prosecutors and defendants in cases containing sexual assault, not only to uncover more evidence but provide extra contextual information, for instance post-trial outcomes. One resource useful in this regard was the Digital Panopticon, a project that links four million records of criminal justice with genealogical data, providing information on a quarter of a million individuals convicted at the Old Bailey. While it focuses largely on the period between 1780-1925, nineteen years after the starting point of this thesis, some information preceding this period is available. For example, Thomas Andrews was given a free pardon instead of being executed after forcefully penetrating a man in a lodging house in 1761.¹⁴⁴

This project summarises and points to records from other archives, which, when available online, were checked for inaccuracies and uncover more information. For instance, many relevant documents relating to criminal justice, physically held in the National Archives, have been digitised and are available to search on commercial websites. Ancestry contains a database of 279 volumes of criminal registers created between 1791-1892, for instance.¹⁴⁵ These registers contained trial information as well as descriptions of individuals, such as

¹⁴¹ Altick, *The English Common Reader*, 394–95. This had risen to 350,000 in 1863, and 750,000 in 1886.

¹⁴² Matthew Engel, *Tickle the Public. One Hundred Years of the Popular Press* (London: Indigo, 1997), 28; Altick, *The English Common Reader*, 394.

¹⁴³ Auerbach, *Armed with Sword and Scales*, 96.

¹⁴⁴ *The Digital Panopticon*, Thomas Andrews, <https://www.digitalpanopticon.org/life?id=obpt17610506-23-defend287>, accessed 11 December 2020. This case is discussed in detail in Chapter Five, 135-136.

¹⁴⁵ *Ancestry, England & Wales, Criminal Registers, 1791-1892*, <https://www.ancestry.co.uk/search/collections/1590>, accessed 13 August 2020.

their age, place of birth, and degree of instruction. However, their use is somewhat limited due to beginning thirty years after the starting point of this thesis.

A more extensive collection is available on Findmypast, which includes the above criminal registers, along with Home Office and Prison Commission records (473 volumes, 1770-1951), prison calendars (61 volumes, 1782-1853), correspondence (111 volumes, 1782-1871), petitions (513 bundles, 1819-1886), hulk and convict prison returns (207 volumes, 1824-1876), among other related documents.¹⁴⁶ Again, most of these began at least a decade after the starting point of this study, limiting their use in the earlier period considered. Aside from trial and post-trial outcomes, these records also contain much information about convicts not mentioned elsewhere. For instance James Egerton – convicted of highway robbery in 1818 after accusing a man of sexual assault – was described in a Newgate Prison Register as a thirty one year old servant, 5ft11, having a pale complexion with dark skin and eyes, slim made, and born in Waterford.¹⁴⁷ Only his occupational status and a different age (twenty-one) appeared in the *Proceedings* and newspaper report of the case.

Online archives such as these, and to a lesser extent the *Proceedings*, have their limitations, however. Indeed, Upchurch has stated that ‘there is a pervasive misperception that the new electronic databases make recovering information about sex between men in the public sphere easy and straightforward. This simply is not the case’.¹⁴⁸ The use of Optical Character Recognition (OCR) – the primary tool used to digitise historical records by scanning handwritten or printed text into digital data – has significant pitfalls. While it claims to be at least 90% accurate in most cases, this can decrease the older documents are.¹⁴⁹ On the other hand, the *Proceedings* used manual double rekeying – a process which involved two individuals reading and transcribing the text, with discrepancies highlighted by a computer

¹⁴⁶ Findmypast, *England & Wales, Crime, Prisons & Punishment, 1770-1935*, <https://search.findmypast.co.uk/search-world-records/england-and-wales-crime-prisons-and-punishment-1770-1935>, accessed 13 August 2020.

¹⁴⁷ TNA, Newgate Prison: Register of Prisoners, 1819 (PCOM2/192).

¹⁴⁸ Charles Upchurch, ‘Full-Text Databases and Historical Research: Cautionary Results from a Ten-Year Study’, *Journal Of Social History* 46, no. 1 (2012): 99.

¹⁴⁹ Joanna Guldi, ‘The History of Walking and the Digital Turn: Stride and Lounge in London, 1808–1851’, *The Journal of Modern History* 84, no. 1 (2012): 116–44; Johanna Pirker and Gerhard Wurzing, ‘Optical Character Recognition of Old Fonts – A Case Study’, *The IPSI BgD Transactions on Advanced Research*, 2016.

but resolved manually. This resulted in a high level of accuracy, but the expensive and time-consuming nature of this method means it has often not been repeated elsewhere.

Furthermore, the popularity of search engines and advent of keyword searching contains inherent issues and biases which affect analyses of historical records. Researchers have been quick to point out how searches can lead to a loss of context, with results having the potential to skew findings as meanings are lost between different contexts.¹⁵⁰ While digital technologies are improving, with methods such as topic modelling and related or weighted searching leading to greater contextualisation and producing promising results, these methods are far from perfect.¹⁵¹ Scholars need to understand how digital archives work, remember the need to use synonyms, and accept that keyword searching is not exhaustive.¹⁵² As Putnam states, we 'need to complement side-glancing with settling in: taking time to learn about the fullness of what was going on in particular times and places, not just the fragments surfaced among search results'.¹⁵³ The method used for searching is discussed in the next chapter.

Chapter Structure

The following chapters provide unique understandings of male on male sexual violence in the late eighteenth and nineteenth centuries. Chapter Two demonstrates the method employed to recover and categorise evidence, and the terrain of offences that contained it. It demonstrates that evidence can not only be found in more obvious crimes relating to sex between men, but also in lesser sexual crimes and theft offences, along with charges relating to harming another individual. Chapter Three then explores the courtrooms where these prosecutions were heard, the experiences of them for the men involved, and how this evidence fits into broader fluctuations of prosecutions throughout the period of study. As

¹⁵⁰ Sarah Bull, 'Digital Archives and the History of Pornography', *Porn Studies* 1, no. 4 (2014): 402–5; Hieke Huistra and Bram Mellink, 'Phrasing History: Selecting Sources in Digital Repositories', *Historical Methods: A Journal of Quantitative and Interdisciplinary History* 49, no. 4 (2016): 220–29; Jane Winters and Andrew Prescott, 'Negotiating the Born-Digital: A Problem of Search', *Archives and Manuscripts* 47, no. 3 (2019): 391–403; C. Annemieke Romein et al., 'State of the Field: Digital History', *History*, 2020, 1–22.

¹⁵¹ Quintus Van Galen and Bob Nicholson, 'In Search of America', *Digital Journalism* 6, no. 9 (2018): 1165–85.

¹⁵² Jenny Presnell and Sara E. Morris, 'The Historical Newspaper Crisis: Discoverability, Access, Preservation, and the Future of the News Record', *IFLA International News Media Conference*, 2017, 11.

¹⁵³ Lara Putnam, 'The Transnational and the Text-Searchable: Digitized Sources and the Shadows They Cast', *The American Historical Review* 121, no. 2 (2016): 401.

will be demonstrated, evidence relating to sexual violence between men can be found throughout the criminal justice system and largely moved with the broader currents of prosecutions.

Chapter Four considers the representation of these prosecutions within the sources consulted through analysis of the language and terminology used to describe these acts, which varied depending on the source and changed significantly across the period of study, though rarely differed from vocabulary used to describe consensual acts. With that in mind, the rest of the chapter investigates the narratives of victims and perpetrators. Specifically, it is shown that victims frequently emphasised a lack of consent by stating the presence of physical violence and verbal pronouncements of non-consent, while perpetrators used their respectability and the connection of sexual acts between men with extortion for self-exoneration. Against this background, Chapter Five investigates the 'actuality' of these acts, starting with the types of violence uncovered. As will be seen, sexual assaults were alleged much more frequently than forced penetration, and the evidence also hints at more unique forms of violence. Furthermore, analysis of the locations of sexual violence demonstrates that most were reported to have occurred in a public space often connected with homosexual culture, and usually at night-time. This suggests that enough was known about sexual violence that men were also able to use accusations of sexual assault as a defence tactic with a degree of reliability. Furthermore, it will be shown that the men involved tended to be of relatively similar age and social status, largely of the lower or middling classes.

Lastly, Chapter Six explores the final stages of these prosecutions. It questions what the courts thought of cases through study of the verdicts and sentences handed out and finds that certain particulars affected conviction and sentences. When sexual assault was the primary offence prosecuted, conviction and severer sentences resulted in cases containing heightened physical violence and witnesses. When it was secondary to another charge of robbery, a sexual assault largely appears to have been ignored in favour of another, more serious, offence. When it was used as a defence tactic, little sympathy for men who used this defence has been uncovered. On the other hand, examination of post-trial outcomes suggests that these particulars made little difference in what occurred after a trial.

Chapter Two: Recovering Incidents of Sexual Violence

All sexual acts between men were illegal in the late eighteenth and nineteenth centuries. As such, court records and newspaper reporting of criminal trials provide important sources of evidence to investigate sexual relations between men, and this thesis is solely based on the use of prosecution records to investigate a particular type of sexual crime. However, how can this evidence be differentiated between consensual and non-consensual acts? This chapter will explore this methodological challenge, investigating the criminalisation of homosexual acts, and describing the method used to distinguish between cases with consenting and non-consenting individuals. By utilising this method, evidence of sexual assault between men has been uncovered not only in the more obvious offences relating to homosexual acts, but also non-sexual crimes, especially charges of theft.

The illegality of homosexual acts gave rise to several possibilities within the evidence. First, that consensual and non-consensual acts were not differentiated. Second, that men may have claimed that a consensual act was in fact not consensual, resulting in claims and counter claims. Third, the possibility of false accusations, either for monetary gain or to deflect attention away from another charge. While the evidence contained cases with sexual assault as the primary act prosecuted, these were not the only charges that contained evidence of male on male violence. For instance, five percent of cases contained a prosecutor testifying they had been robbed as well as sexually assaulted, but were ultimately prosecuting for a non-sexual offence, hence the sexual assault was secondary to another charge. More frequently found, however, were prosecutions where the defendant was (truthfully or not) detailing sexual assault to absolve responsibility for another crime, therefore a claim of sexual assault was used to aid their defence – in this way, it was tertiary to the main charge.

In all, this chapter is concerned with the methodological challenges involved in a study of male on male sexual violence, showing how they can be overcome, and demonstrating that evidence was dispersed throughout multiple offence categories.

How did the law on sexual relations between men evolve?

Prosecutions for sodomy are the most obvious place to look for evidence of non-consensual acts. The term 'sodomy' originates from the biblical stories of Sodom and Gomorrah, cities destroyed by divine judgement. While these stories were originally concerned with fornication, uncleanness, and atheism, over time homoerotic lust became the main component.¹ The act of sodomy – penile penetration of the anus of a man, woman, or beast – was first criminalised in 1534 due to insufficient punishment to deal with such a 'detestable and abominable vice' (see Appendix A).² Before this it was punished in the ecclesiastical courts as a form of heresy.³ Moreover, this criminalisation can be viewed as part of a wider movement to define the state as the only source for establishing the range of acceptable relationships.⁴ It went through multiple revisions in the sixteenth century before being reinstated in 1562 and remained in place throughout the majority of the period under study.⁵

In order to convict for sodomy, evidence of penetration and ejaculation needed to be presented along with the testimony of two witnesses. If one person stated that the sexual act was not consensual, then their testimony could be used with one other witness who was not involved in the act.⁶ Hence, consent could be admitted by men involved in homosexual acts, though this made them criminally culpable, if witnesses could prove an act had taken place.

The burden of proof was the same as for the offence of rape – carnal knowledge of a woman forcibly and against her will. Despite the linking of rape and sodomy in regards to evidence, they were viewed as conceptually distinct. One influential legal writer made no

¹ Harry Cocks, *Visions of Sodom: Religion, Homoerotic Desire, and the End of the World in England, c.1550-1850* (Chicago: The University of Chicago Press, 2017), 247.

² *An Act for the Punishment of the Vice of Buggery*, 25 Hen.8, c.6 (1533-1534); Paul James Johnson, 'Buggery and Parliament, 1533-2017', *Parliamentary History* 38, no. 3 (2019): 2.

³ For a discussion of sodomy before this law see Johnson, 2–3; Richard B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts 1500-1860* (Cambridge: Cambridge University Press, 2006).

⁴ Ed Cohen, 'Legislating the Norm: From Sodomy to Gross Indecency', *South Atlantic Quarterly* 88, no. 1 (1989): 186.

⁵ *An Act for the Punishment of the Vice of Buggery*, 5 Eliz, c.17 (1562).

⁶ Harry Cocks, *Nameless Offences: Homosexual Desire in the Nineteenth Century* (London: I. B. Tauris, 2003), 34–39.

connections between the two crimes aside from the evidence of proof, for example.⁷ Indeed, rape in the eighteenth-century was understood in terms of property, marriage, and family; though by the nineteenth century greater emphasis was placed on the degree of violence involved.⁸ In contrast, sodomy was understood by William Blackstone as ‘the infamous crime against nature’, and by William Eden as an abuse of passion against society.⁹ Hence, although linked by ‘carnal knowledge’ and the requirements of evidence, sodomy and rape were understood separately, including in how consent functioned.

The seventeenth century saw the creation of a lesser offence, ‘attempt to commit sodomy’, which was a misdemeanour that saw increased usage in the eighteenth century and especially throughout the nineteenth.¹⁰ Unlike sodomy it did not have a precise definition, and could be used widely to cover a variety of sexual acts, including sexual touching and propositioning.

The 1562 Sodomy Act was repealed in 1828 when sodomy was designated as an offence against the person, as part of Robert Peel’s effort to codify English criminal law.¹¹ It was already conceptualised in this way by Blackstone in the late eighteenth century.¹² While this Act did not change the wording of the offence, the requirement of ejaculation for conviction was dropped, as ‘public justice was often thwarted’ by the difficulty of proof.¹³ It was grouped under similar offences such as rape and other assaults (see Appendix A). A subsequent Offences against the Person Act (1861) removed the death penalty from conviction of sodomy, though a similar proposal had been approved by the House of Commons twenty years before (1841). However, it did not pass in the House of Lords, with

⁷ EH East, *A Treatise of Pleas of the Crown* (1803) quoted in Lindsay Farmer, *Making the Modern Criminal Law: Criminalization and Civil Order* (New York: Oxford University Press, 2016), 266.

⁸ Carolyn Conley, ‘Rape and Justice in Victorian England’, *Victorian Studies* 29, no. 4 (1986): 519–36; Shani D’Cruze, ‘Sexual Violence in History; a Contemporary Heritage?’, in *Handbook of Sexual Violence*, ed. S. Walklate and J. Brown (London: Routledge, 2011), 23–52.

⁹ Farmer, *Making the Modern Criminal Law*, 270–71.

¹⁰ Cocks, *Visions of Sodom*, 115–17.

¹¹ *Offences Against the Person (England) Act*, 9 Geo.4, c.31 (1828); Johnson, ‘Buggery and Parliament’, 7.

¹² Cohen, ‘Legislating the Norm’, 198.

¹³ House of Commons Debate (1828) quoted in Johnson, ‘Buggery and Parliament’, 7–8.

an amendment proposed and agreed so that sodomy retained the death penalty.¹⁴ In practice, no individuals were executed for sodomy after 1835.¹⁵

The 1861 Act allowed courts to pass sentences of penal servitude for a minimum of ten years and maximum of life. In addition, this was the first time that sodomy was grouped under the designation of 'unnatural offences', with indecent assault and attempted sodomy, which were also officially codified. Cohen concludes that this piece of legislation signalled an 'effective shift in the legal interpretation of sodomy's criminality from a secularization of canon law to an essentially normative transgression'.¹⁶ It was not until 1967 that it figured as part of a broader category of 'sexual offences' (Appendix A).¹⁷ By decriminalising consensual sex between men, the 1967 Act introduced consent into the offence of sodomy: non-consensual buggery with a man over sixteen years old resulted in ten years imprisonment.¹⁸ Non-consensual buggery was redefined as rape with the Criminal Justice and Public Order Act (1994), and punished with life imprisonment (Appendix A).

Therefore, sodomy law did not define itself in relation to consent in the period of study. Rates of prosecution for sodomy fluctuated across the period and declined with the increased usage of a more flexible charge: indecent assault.

Indecent assault was a misdemeanour established in common law (judge made law based on precedent rather than statute) during the eighteenth century, and was used primarily in the nineteenth century for sexual acts between men or between men and women that did not include penetration.¹⁹ It had a vague definition which meant that a broad range of sexual behaviours could be prosecuted and brought into public view.²⁰ As a misdemeanour,

¹⁴ *Offences Against the Person Act*, 24 & 25 Vict, c.100 (1861); House of Commons Debate (1841) quoted in Johnson, 9.

¹⁵ Dominic Janes, 'Regarding Pratt and Smith, the Last Couple of Sodomites to Be Hanged in Britain', in *From Sodomy Laws to Same-Sex Marriage: International Perspectives since 1789*, ed. Sean Brady and Mark Seymour (London: Bloomsbury Academic, 2019).

¹⁶ Cohen, 'Legislating the Norm', 202.

¹⁷ *Sexual Offences Act*, c.60 (1967).

¹⁸ Ibid.

¹⁹ Louise A. Jackson, *Child Sexual Abuse in Victorian England* (London: Routledge, 2000), 14.

²⁰ Christine L. Krueger, 'Naming Privates in Public: Indecent Assault Depositions, 1830-60', *Mosaic: A Journal for the Interdisciplinary Study of Literature* 27, no. 4 (1994): 121.

it did not carry stringent evidential requirements like sodomy, and appeared to be used in a similar way as attempted sodomy, often describing similar acts.²¹

Analysis of depositions by Cocks showed that the offence was used to prosecute both consenting and non-consenting homosexual acts.²² Its ambiguity led to its increased usage throughout the nineteenth century, and is one of the reasons why prosecutions for sodomy and attempted sodomy declined, as it was easier to prosecute for this lesser offence. It was officially codified in the 1861 Offences Against the Person Act, stating that an indecent assault on a male was punishable by penal servitude for a maximum of ten years.²³ However it was only formalising the practice of charging acts of sodomy with this lesser offence, along with attempted sodomy.²⁴ Hence, indecent assault was a malleable charge that contained a wide variety of sexual acts, with both men and women as victims, and both consensual and non-consensual homosexual acts.

How can we recover incidents of sexual violence among these?

Now that the more obvious crimes that might contain sexual violence between men have been outlined, attention will turn to the method used to recover evidence. While literature on male homosexuality in the period of study has uncovered many records of sexual acts between men within these offences, there has been little attempt to separate them in terms of consensual and non-consensual acts. How might we go about doing this?

Specific cases were recovered from three main sources: the Middlesex and Westminster Sessions Papers, the *Old Bailey Proceedings*, and five London newspapers.²⁵ Search terms were chosen through study of literature on male homosexuality in the period.²⁶ Initially, three terms which most obviously signified sexual acts between men were searched for: 'sodomy', 'buggery' (a commonly used synonym for sodomy), and 'indecent assault'. This

²¹ Cocks, *Nameless Offences*, 25.

²² Cocks, 25–28.

²³ *Offences Against the Person Act*, 24 & 25 Vict, c.100 (1861).

²⁴ Arnold D. Harvey, 'Prosecutions for Sodomy in England at the Beginning of the Nineteenth Century', *The Historical Journal* 21, no. 4 (1978): 941.

²⁵ See Chapter One, 28–35.

²⁶ Especially Cocks, *Nameless Offences*; Charles Upchurch, *Before Wilde: Sex Between Men in Britain's Age of Reform* (London: University of California Press Ltd, 2009); 'Full-Text Databases and Historical Research: Cautionary Results from a Ten-Year Study', *Journal Of Social History* 46, no. 1 (2012): 89–105.

resulted in 41 records of interest in the Middlesex and Westminster Sessions Papers, along with 843 newspaper reports. In the *Proceedings*, 357 cases were returned, including 101 prosecutions for attempted sodomy. However, after 1790 selective reporting in the *Proceedings* meant that very little detail was present, resulting in a much-reduced selection of sexual offences to explore.

Variations of these words, such as 'sodomite', 'sodomitical', 'indecently assaulting', and 'indecently assaulted' were incredibly useful as signifiers of sexual activity between men in non-sexual crimes, resulting in 67 cases to look through in the *Proceedings*, and 684 more newspaper reports to study, which are discussed in the section below.

From there, broader words were used to uncover more evidence, specifically: 'unnatural', 'detestable', 'abominable', 'infamous', 'nameless', and 'diabolical' – language that could be used as veiled references to sexual activity between men. In the court records, 386 cases were returned. The newspapers, however, gave tens of thousands of results for these terms. To combat this, the words were combined with others, specifically 'assault', 'crime', 'offence', and 'practices', creating phrases such as 'unnatural offence' or 'infamous crime', which referred more directly to sex between men. These combinations reduced the number of results to 1752 reports. Although still a large amount, many were ignored due to covering assaults on women, children, or animals. Furthermore, some were simply the same report reproduced in multiple newspapers, with no new information.

This method was supplemented by terminology which referred to both heterosexual and homosexual assaults. For instance, the phrase 'indecent liberties' gave 439 results for all sources, most from newspaper reports. Other searches included body parts; the most useful was 'private parts', which gave 154 records across the sources. More explicit words such as 'penis', 'anus', and 'fundament' resulted in 20 cases returned in the *Proceedings*, and tens of thousands of newspaper reports, the latter of which were set aside due to the large volume of records already collected.

Further investigation of the Middlesex and Westminster Sessions Papers was conducted for the purpose of uncovering additional evidence of sexual assault. 400 examinations with a charge of misdemeanour were researched, with an accusation of sexual assault recovered

from 19. All were dated pre-1836, after which the Sessions Papers are mostly uncatalogued. A sample was conducted on these uncatalogued collections, specifically six bundles (Apr-May 1840, Jan-Mar 1844, Jul 1848, Apr 1852, Nov 1856, Aug 1860), which comprised an average of 50 examinations per bundle. None contained evidence of male to male sexual violence. Furthermore, once cases were found the names of prosecutors and defendants were searched in other databases, specifically the Digital Panopticon, Ancestry, and Findmypast.²⁷ This led to several additional cases being found.

As has been seen, this method resulted in several thousand records to explore. To solve the methodological challenge of separating out instances of sexual violence, the issue of consent emerged as central, and a set of criteria was developed to 'test' the evidence. These were separated into primary and secondary indicators of sexual violence. For evidence to be included, at least one primary indicator had to be present along with one secondary indicator. If both primary indicators were present, even if there were no secondary indicators, then the case was included.

Primary indicators were essential pointers of non-consensual sexual acts and comprised references to physical violence and verbal non-consent when describing a sexual act. Violence included being thrown around, or the seizing of the body or any body parts. Verbal non-consent involved use of phrases such as 'forcibly' or 'unwanted', stating that a victim has been hurt, or that noises were made during the assault, such as crying out. Secondary indicators were less important but also markers of non-consent; for example, actual or attempted resistance to a sexual act, and escape or attempts to do so.

By using this method, 244 cases were collected which contained evidence of male on male sexual violence. Keyword searching returned prosecutions not only for sexual offences, but also many other prosecutions for non-sexual offences which included allegations of sexual assault. These were largely crimes of theft, such as robbery or extortion, but also some related to harming another individual, such as assault and murder. Specifically, 38 cases were found in the Middlesex and Westminster Sessions Papers, and were mostly sexual misdemeanours. 66 were collected from the *Proceedings*, including sexual, theft, and other

²⁷ See Chapter One, 33-34.

crimes. Newspaper reporting comprised the largest amount of cases at 140, and were largely sexual offences. All, however, contained an accusation of sexual assault, and these non-sexual offences will be dealt with in the final section of this chapter.

Where did male on male sexual violence appear in these newspaper reports? Most were in the columns of courtroom news, which became a regular feature in the newspapers researched in the nineteenth century. Usually, they were bundled with news of prosecutions of specific courts, under broad headings such as 'Central Criminal Court', 'Middlesex Sessions', or 'Public Office, Bow-Street'. Rarely were these article names more specific on the offence. One such was 'A Very Extraordinary Charge', used by the *Morning Post* in 1818.²⁸ Two stated simply 'London', and at times mixed criminal reports with other London news. For example in one late eighteenth century issue of the *Morning Post* reports of crimes at Bow Street appeared in between news of a Reverend being reinstated in Hereford and a man dying after getting a sudden pain on his head.²⁹ The vast majority though, came under the heading 'Police' or 'Police Intelligence', which was standard in the nineteenth century.

A third contained no other heading at all, though most were divided into specific police courts, for example 'Clerkenwell', 'Guildhall', or 'Marylebone'. Criminal cases were often 'grouped together and organized according to a particular circuit or geographical location'.³⁰ Sometimes they were much more specific on the offence, such as how *The Times* wrote 'Attempt to commit an unnatural crime' or 'Bow Street - Extorting Money By Threats' by the *Morning Post*.³¹ At other times, newspaper opinions came through in the headlines. The *Post* used the headline 'Another Monster' to describe a 'criminal assault' in Hyde Park in 1810, as well as 'Hatton Garden - Extraordinary Charge' in 1833 and 'A Profligate Prosecutor' in 1846.³² Despite these rare bespoke headings in the *Post*, on the whole though, they were factual and straightforward, as with the article names.

²⁸ *Morning Post*, 29 August 1818.

²⁹ *Morning Post*, 5 February 1778.

³⁰ Kim Stevenson, 'Outrageous Violations: Enabling Students to Interpret Nineteenth Century Newspaper Reports of Sexual Assault and Rape', *Law, Crime and History* 4, no. 1 (2014): 42.

³¹ *The Times*, 5 April 1793; *Morning Post*, 19 January 1831.

³² *Morning Post*, 18 October 1810; 27 November 1833; 3 November 1846.

Sub-headings were another way of drawing audiences in with sensationalist information, though these were only present in a minority of cases. Some followed the headings, with simply the name of the court. Others were more attention grabbing. The *Morning Chronicle* used the name of the court more often than others, but also stated 'Extraordinary Case' to describe an indecent assault by an 'elderly' man on Constitutional Hill.³³ *The Times* – generally more muted than other papers – used the sub-heading 'atrocious case' to describe an 'offence of the most atrocious nature' outside a picture shop in 1822.³⁴ Unsurprisingly, the two 'popular' papers known for their crime news used sensationalist sub-headlines more frequently than others. *Lloyd's Weekly Newspaper* wrote about indecent assaults under headings such as 'Extraordinary Charge against a Ballet Dancer.- A Man Disguised as a Woman' and at another time 'Something Disgraceful'.³⁵ *Reynolds's Weekly Newspaper* followed suit, stating 'Alleged Bestiality' when writing about an indecent assault on a nineteen year old.³⁶

High profile cases might get their own space at the expense of other crime news. Stevenson noted that newspaper 'coverage of criminal trials can provide a substantial amount of authentic reference material'.³⁷ Indeed, *The Morning Chronicle* devoted a whole page to the trial of Samuel Foote at the King's Bench in 1776, in between other London news.³⁸ Similarly, the case of the Earl of Kingston was given almost a full column in the same paper in 1848.³⁹ Two and a half columns out of only twenty-four in the whole paper were supplied to cover the trial of Charles Baring Wall, MP for Guildford, in an issue of *The Times* in 1833.⁴⁰

In terms of word count, most reports were under 400 words, with the largest proportion only short (at fewer than 100 words). This was standard for the eighteenth century, before experiencing growth in the early nineteenth century.⁴¹ Generally, these shorter reports simply stated that an offence had taken place with the perpetrator committed, perhaps

³³ *Morning Chronicle*, 14 September 1825.

³⁴ *The Times*, 5 October 1822.

³⁵ *Lloyd's Weekly Newspaper*, 22 April 1849; 15 June 1856.

³⁶ *Reynolds's Weekly Newspaper*, 20 June 1852.

³⁷ Stevenson, 'Outrageous Violations', 42.

³⁸ *Morning Chronicle*, 10 December 1776.

³⁹ *Morning Chronicle*, 1 April 1848.

⁴⁰ *The Times*, 13 May 1833.

⁴¹ Udo Fries, 'Crime and Punishment', in *Early Modern English News Discourse*, ed. Andreas H. Jucker (Amsterdam: John Benjamins Publishing Co, 2009), 29.

with some details on the location or names of the prosecutor and defendant. For example, the shortest was this fourteen-word statement by the *Morning Post* in 1778: 'James Nicholls was committed for attempting to commit an unnatural crime on Michael Connor'.⁴² Indeed, only four reports before the nineteenth century were more than a hundred words.

However, the longest report collected by far was a 4003-word article by the *Morning Chronicle* of the aforementioned trial of Samuel Foote in 1776.⁴³ In the early nineteenth century reports became longer and more frequent due to technological advances, such as *The Times* becoming the first paper to introduce steam machinery in 1814, before moving from a four to five column format in 1819, and later to six.⁴⁴ *Lloyd's Weekly Newspaper* was relaunched in 1843 from eight pages of three columns to eight pages of five columns, one column less than *The Times* and most other London dailies.⁴⁵ The longest case recovered was at 2610 words, a well-publicised case of indecent assault by an official in the Tower of London against a private, found in *The Times* in 1842.⁴⁶

Overall, reports of sexual violence between men were bundled in with other criminal justice stories, especially prosecutions. Mostly, reports of sexual assaults between men appeared in the standard court columns of newspapers. This shows that reports of sexual assaults between men were of an everyday character – when reported in the newspapers, they were rarely singled out as aberrations, especially with increased reporting of all offences from the early nineteenth century. Increased space appeared when higher class or famous men were involved, or when a case appeared at the Court of King's Bench. Instead, reports of sexual assaults between men were usually given as much space as other crimes.

Once all this evidence had been collected, including prosecutions for sexual and non-sexual offences, it was split into three categories depending on the importance of a sexual assault in a prosecution. First, whether it was the *primary* driver of a case, with a man prosecuting another man for committing a sexual assault on them. Second, prosecutors who testified they had been robbed as well as sexually assaulted, but were prosecuting for a non-sexual

⁴² *Morning Post*, 5 February 1778.

⁴³ *Morning Chronicle*, 10 December 1776.

⁴⁴ Aled Jones, *Powers of the Press: Newspapers, Power and the Public in Nineteenth Century England* (Aldershot: Scholar Press, 1996), 14.

⁴⁵ Edward Jacobs, 'Edward Lloyd's Sunday Newspapers and the Cultural Politics of Crime News, c. 1840–43', *Victorian Periodicals Review* 50, no. 3 (2017): 625.

⁴⁶ *The Times*, 11 July 1842.

offence, hence the sexual assault was the *secondary* driver of a case. Third, in contrast to the above, an accusation of sexual assault levelled by a defendant against a prosecutor who charged them with a non-sexual crime, usually theft. In this way it was used as a defence tactic possibly to reduce responsibility for another crime, consequently it was *tertiary* to the main charge.

Attention will now turn to exploring the terrain of charges where sexual assaults appeared, starting with sexual offences, and non-sexual crimes thereafter.

How many prosecutions for sodomy and indecent assault have been uncovered?

This section covers the more obvious offences where non-consensual acts were found, and when such offences were the primary driver of a prosecution. For instance, the total number of cases for sodomy at the Old Bailey from the starting year of this thesis until sexual crimes became substantially lacking in detail in the *Proceedings* at the end of the eighteenth century is 22, of which five appear to have involved violence. Two were taken from 1761 – the initial year studied – of only three sodomy prosecutions for that entire decade.⁴⁷ One of these contains testimony by John Finimore, who was forcefully penetrated by a man in a public house. He recalls that at four in the morning he ‘awaked with a violent pain and agony, which I was in, and found his y - d in my body’.⁴⁸

Prosecutions for sodomy increased from the 1780s, and did not dissipate for seventy years.⁴⁹ This increase was partially due to greater ease for individuals to prosecute rather than a moral crusade on immorality.⁵⁰ Furthermore, trials for sodomy did not increase in isolation but with others, such as prosecutions for crimes against property and the person.⁵¹ However, towards the end of the eighteenth-century detail in sodomy cases became sorely lacking, which continued throughout the entirety of the *Proceedings*. For example, near the turn of the century we can read that William Wilkin was indicted, however ‘the evidence on

⁴⁷ The other took place in 1760.

⁴⁸ *Old Bailey Proceedings* (hereafter *OBP*), trial of Thomas Andrews, May 1761 (t17610506-23).

⁴⁹ Harvey, ‘Prosecutions for Sodomy’; Cocks, *Nameless Offences*, 22.

⁵⁰ Cocks, *Nameless Offences*, 18–20.

⁵¹ See below, 86–91.

the trial being extremely indecent, the Court ordered the publication of it to be suppressed'.⁵² Cases in the nineteenth century eschew this justification altogether, usually stating only the name of the defendant(s), verdict, sentence, judge, and jury. It now had a formal character.⁵³ Unfortunately, this means that most of these cannot be differentiated between consenting and non-consenting acts. If the proportion of sexual violence between men in late eighteenth century kept pace with the increase in prosecutions, then a significant number of sexual assaults may have been taken to the Old Bailey during the nineteenth century. Similarly, perhaps the presence of violence resulted in prosecutions in the first place.

Outside of the *Proceedings*, newspaper articles also referred explicitly to sodomy. For example, the *Morning Post* described a 'Sodomitical attack' which took place in 1776; here the legal charge of sodomy was fused with an extreme form of the more standard assault charge. This report was describing the first sexual assault on a constable found in this thesis, by a man named only as Thomas.⁵⁴ Almost eleven years later, *The Times* reported a charge of the 'unnatural and detestable crime of sodomy' which was committed on a servant outside Mansion House.⁵⁵

Attempted sodomy appeared throughout the criminal justice system, but in small numbers from the court records as with sodomy, with one case obtained from the Old Bailey and three more from the Middlesex Sessions. The former described an attempted forced penetration by Roger Sweetman, with the victim declaring that Sweetman 'had turned me on my face, and he had got his instrument between my thighs'.⁵⁶ Sweetman went to trial not only for this attempted sodomy, but also a separate sodomy offence. While the attempted sodomy case was uncensored, evidence in the full sodomy case was 'suppressed, as too indecent for publication', making the determination of consent impossible.⁵⁷ The charge of attempted sodomy is unique as it is not only a misdemeanour, with the Old Bailey usually trying felonies, but also the first to appear in the *Proceedings* for thirty-six years, and

⁵² *OBP*, trial of William Winklin, February 1797 (t17970215-46).

⁵³ Michael Harris, 'London Newspapers', in *The Cambridge History of the Book in Britain*, ed. Michael F. Suarez, SJ and Michael L. Turner (Cambridge: Cambridge University Press, 2009): 413–33.

⁵⁴ *Morning Post*, 3 December 1776. See Chapter Five, 144–147, for more on sexual assaults on policemen.

⁵⁵ *The Times*, 31 October 1787.

⁵⁶ *OBP*, trial of Roger Sweetman, September 1785 (t17850914-164).

⁵⁷ *OBP*, trial of Roger Sweetman, September 1785 (t17850914-163).

none were seen again for nearly fifty years. Presumably this was because both the felony and misdemeanour were tried together in the higher court. Moreover, prosecutions for attempted sodomy were on the rise in the early part of the nineteenth century.⁵⁸ This is evidenced in multiple cases found at the Middlesex Sessions, some of which contained repeated touching of 'private parts' and mentioned the sobriety of prosecutors and defendants.⁵⁹ Another was a similar assault but on four separate men in a public house, two of whom were lawyers.⁶⁰

In the newspapers, reports often described the offence of attempted sodomy. For instance, the earliest newspaper case found to contain a sexual assault between men was in the *Morning Chronicle* in 1772, when a clerk was reported to have been prosecuted for an 'attempt to commit an unnatural crime'.⁶¹ In addition to understandings of sexual relations between men in terms of the unnatural, there were other words which also signified sexual acts – the abominable and detestable. For example, the singular offence of 'abominable assault' committed by a waiter appeared nine years after the turn of the century, in a short 53 word article by the *Morning Chronicle*.⁶² More frequent was the term 'detestable offence', written in three reports in a fourteen-month period by the *Morning Post*, all with the prefix attempt or attempting to commit.⁶³ A combination of these terms was used once, in the lengthy charge of 'assaulting him, with intent to commit a crime of a most abominable and detestable kind'. The prosecutor in this case was a retired salesman, and the defendant a butler.⁶⁴ Hence, sexual assaults between men were spread throughout many categories containing various terminology.⁶⁵

Indecent assault appeared most frequently in newspaper reporting of summary trials and the Old Bailey. It was increasingly used as a charge throughout the period, for example in a

⁵⁸ Upchurch, *Before Wilde*, 94.

⁵⁹ *London Metropolitan Archives (hereafter LMA)*, information of George Tomkins, 3 April 1827 (MJ/SP/1827/05/131); information of Robert Graham and Thomas Henderson, 17 September 1827 (MJ/SP/1827/09/146).

⁶⁰ *LMA*, information of John Ling et al, 7 January 1829 (MJ/SP/1829/01/037).

⁶¹ *Morning Chronicle*, 18 September 1772.

⁶² *Morning Chronicle*, 25 October 1809.

⁶³ *Morning Post*, 12 January 1815, 17 April 1815 and 2 March 1816.

⁶⁴ *Morning Chronicle*, 23 June 1823.

⁶⁵ See Chapter Four, 98-102.

case which described an assault on a policeman by an unidentified 16 or 17 year old clerk.⁶⁶ Only two cases of indecent assault were recovered from the Middlesex Sessions Papers; both contained touching of private parts, and the prosecutors in both punched or pushed the perpetrators away.⁶⁷ In the *Proceedings*, selective reporting mean that no cases of indecent assault contained the necessary detail to determine non-consent, as they only appear from 1835. However, newspaper reporting has identified five prosecutions taken to the Old Bailey which contained sexual violence, three of which were for assaults on policemen.

In what other offences can sexual assault be found?

Although sexual violence has been found in these more obvious crimes relating to sexual acts between men, the method employed has uncovered many prosecutions that contained evidence in less obvious offences. These include lesser sexual crimes (in which sexual assault was the primary driver of a case), but also theft offences and charges relating to other types of harm (in which sexual assaults were secondary or tertiary to another charge).

This includes indecent exposure, a crime generally dealt with summarily under the Vagrancy Act (1824) and later Town Police Clauses Act (1847). The former Act especially concerned the regulation of public spaces, and targeted not only the homeless and beggars but also prostitutes, fortune tellers, those intending to commit a crime, as well as men indecently exposing themselves in public.⁶⁸ This latter offence could only be committed by a male with his penis in public view, and Cox, Harris, Rowbotham and Stevenson argued that it represented an example of new legislation which ‘constituted a marked advance in standards of public “civility” of behaviour’.⁶⁹ Thirteen cases appear to have been sent to the Middlesex Sessions up to 1836 (judging by surviving examinations in the Middlesex Sessions

⁶⁶ *Morning Chronicle*, 24 July 1823.

⁶⁷ LMA, information of Abraham Perkins, 15 March 1828 (MJ/SP/1828/04/073); information of Robert Jervins et al, 18 May 1833 (MJ/SP/1833/05/051).

⁶⁸ For a classic analysis see M. J. D. Roberts, ‘Public and Private in Early Nineteenth-Century London: The Vagrant Act of 1822 and Its Enforcement’, *Social History* 13, no. 3 (1988): 273–94; For more recent analyses see Paul Lawrence, ‘The Vagrancy Act (1824) and the Persistence of Pre-Emptive Policing in England since 1750’, *The British Journal of Criminology* 57, no. 3 (2017): 513–31; Michal Shapira, ‘Indecently Exposed: The Male Body and Vagrancy in Metropolitan London before the Fin de Siècle’, *Gender & History* 30, no. 1 (2018): 52–69.

⁶⁹ David J. Cox, Candida Harris, Judith Rowbotham and Kim Stevenson, *Public Indecency in England 1857-1960: 'A Serious and Growing Evil'* (London: Routledge, 2015), 23–24.

Papers). Most concerned exposure of genitals to women or children. One from 1827 contained detail of the sexual touching of multiple men, including a violent assault and attempting to unbutton another man's trousers.⁷⁰ The presence of violence is perhaps the reason for it being passed higher to the Middlesex Sessions, rather than being dealt with summarily.⁷¹ Cocks found relatively few (i.e. 21) cases of indecent exposure reported in the press and criminal petitions for the whole of the nineteenth century.⁷² Cox, Harris, Rowbotham and Stevenson note the difficulty of proving a crime had been committed as perpetrators could argue they were merely in the act of urination.⁷³

Another sexual offence found is 'Exciting to the commission [sic] of the crime of Buggery', which referred to propositioning. The narrative of this case is similar those explored above, with William Henry Waite alleging a man 'took hold of my hand squeezed it and put it against his private parts'.⁷⁴ Furthermore, usage of the term buggery is rare, with sodomy much more common across the period. The final unique charge, also found in the Middlesex and Westminster Sessions Papers, is 'having taken indecent liberties with the Person of the said Henry Perry'. The appearance of this deposition is strange itself as most examinations are uncatalogued for the year in which it appears, 1836.⁷⁵ That these charges have been collected shows how sexual assaults between men appeared in many different sexual offences, and their low appearance suggests that they were generally charged as other crimes.

The final selection of sexual offences were collected from cases of misdemeanour heard at the Middlesex and Westminster Sessions. Just over half of cases found at these Sessions stated on the examination that the charge was simply 'misdemeanour': nineteen cases in total. A broad descriptor, this term could encompass a wide variety of crimes, including sexual violence. A survey of 300 examinations marked this way showed that the offences were mostly simple assaults, with somewhat less for theft and money related offences not containing male on male sexual assault.⁷⁶ Indeed, most charges found by the Grand Jury at

⁷⁰ LMA, information of Andrew Brockley et al, 7 September 1827 (MJ/SP/1827/09/106).

⁷¹ See Chapter Six, 185-225.

⁷² Cocks, *Nameless Offences*, 28.

⁷³ David J. Cox, Candida Harris, Judith Rowbotham and Kim Stevenson, *Public Indecency in England*, 144.

⁷⁴ LMA, information of William Henry Waite and John Usher, 10 July 1826 (MJ/SP/1826/09/138).

⁷⁵ LMA, information of Henry Richard Middleton Perry et al, 11 April 1836 (MJ/SP/1836/05/012).

⁷⁶ 260 were created between 1826 and 1837, with 40 more up to 1845.

the Middlesex Sessions were for petty felony or misdemeanour.⁷⁷ Sexual crimes did appear occasionally, especially sexual assaults of both children and women, and even a case of bestiality. A small portion recorded sexual assaults against men. For instance, two contained statements of forced penetration while staying in lodging houses.⁷⁸

Sometimes the misdemeanour charges were more specific. Five cases were for 'unnatural misdemeanour', evidently alluding to the same-sexual acts which took place more specifically than just 'misdemeanour'. Furthermore, this offence appeared to be noting a non-consensual act more frequently than other offences. Of the six cases in which this term is used, only one was consensual. Indeed, three of these five unnatural misdemeanours contained a narrative of forced penetration. For instance, John Summerson woke to find his sleeping partner 'sitting up in Bed with a phial Bottle in his hand and rubbing my fundament with his other'.⁷⁹ As a specific charge it was rarely used, however. It has been very useful in finding cases of sexual assault, and 'unnatural misdemeanour' may have been used by magistrates or victims to hone in on the lack of consent. Perhaps more are hidden in the uncatalogued collections, which were not sampled due to a lack of benefit considering time constraints.⁸⁰

The paragraphs above have demonstrated that evidence of sexual assault can be recovered from several offences which were 'sexual' in nature. Although the more obvious crimes – sodomy, attempted sodomy, and indecent assault – have been collected most often, others such as indecent exposure and cases of misdemeanour also contained relevant evidence.

Theft offences comprised another large category of evidence collected, and included cases with sexual assault as the secondary or tertiary driver of a prosecution. Robbery was defined as taking the property from a person with violence, or the plausible threat of violence.⁸¹ Similarly, highway robbery constituted an assault which involved the taking of property from the victim on the King's Highway, which included on the streets of London. It often took

⁷⁷ Norma Landau, 'Appearance at the Quarter Sessions of Eighteenth- Century Middlesex', *The London Journal* 23, no. 2 (1998): 30.

⁷⁸ LMA, information of James Webster et al, 7 August 1827 (MJ/SP/1827/09/112); information of William Girley, 12 September 1827 (MJ/SP/1827/09/152).

⁷⁹ LMA, information of John Summerson, 13 September 1831 (MJ/SP/1831/09/014).

⁸⁰ See 42-43.

⁸¹ Simon Devereaux, 'Execution and Pardon at the Old Bailey 1730-1837', *American Journal of Legal History* 57, no. 4 (2017): 452.

place at night when the victim was returning home.⁸² Drunken men made easy targets. Beattie stated that a large number of these robberies went unprosecuted.⁸³ It was an offence which carried capital punishment since the sixteenth century, though statutes from the late seventeenth century cover the period here.⁸⁴ The perpetrator of this crime was idealised in popular culture both before and during the period under study, however it was an offence which engendered considerable concern in the late eighteenth and early nineteenth centuries.⁸⁵

Prosecutions for highway robbery declined dramatically in the early nineteenth century due to changes to the urban environment and improvements in policing, and other forms of robbery became more prevalent.⁸⁶ Twenty-two cases have been found, which were largely 'tertiary' cases (in which the defendant alleged he had been assaulted by the prosecutor). In 1822, an ironmonger testified that Aaron Crossley Seymour 'put one hand across his neck, and the other into his breeches' while in a coach.⁸⁷ Only two cases of highway robbery were tried at all at the Old Bailey after 1832, both outside the period.⁸⁸ While the proportion of sexual assaults in highway robberies was low in terms of the total number of cases heard, their appearance show how evidence of sexual violence was spread throughout many offence categories.

Fourteen prosecutions for robbery also contained evidence of sexual assault. In one, a sentry in his defence stated how another man 'began to act as a Sodomite to me; the same as a man would, if he had a woman in bed with him', after being invited into St James's Palace by a servant.⁸⁹ As with other theft offences, the total proportion of prosecutions

⁸² David Taylor, *Crime, Policing and Punishment in England, 1750-1914* (Hampshire: Macmillan, 1998), 38.

⁸³ John M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton: Princeton University Press, 1986), 148-61.

⁸⁴ *Benefit of Clergy, etc, Act*, 23 Hen.8, c.1, s.3 (1531); 3 Will & Mar, c.9 (1691); *Apprehension of Highwaymen Act*, 4 Will & Mar, c.8 (1692).

⁸⁵ Taylor, *Crime, Policing and Punishment*, 31.

⁸⁶ Robert Hopps, 'Narratives of Crime and Disorder: Representations of Robbery and Burglary in the London Press, 1780-1830' (PhD Thesis, The Open University, 2017), 147-56.

⁸⁷ *OBP*, trial of William Townsend alias Pocock, October 1822 (t18221023-36).

⁸⁸ Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'Crime and Justice - Crimes Tried at the Old Bailey', *OBP*, <https://www.oldbaileyonline.org/static/Crimes.jsp>, accessed 6 October 2019; See Hopps, 'Narratives of Crime and Disorder' for a discussion on the disappearance of highway robbery as an offence category.

⁸⁹ *OBP*, trial of Daniel Hickman otherwise Hickins, July 1783 (t17830723-5).

containing sexual assaults is low, but the key finding here is that that sexual violence between men was spread throughout various offences.

More common however was extortion, which involved the use of threats to obtain money. All but one case has been categorised as tertiary. Generally, this crime involved threatening to disclose a criminal or embarrassing alleged act to the police or press. When concerning a sexual act between men it had a nickname: 'the Common Bounce'.⁹⁰ The potential loss of respectability made this offence particularly heinous to contemporaries. The crime of extortion originated from an ancient common law misdemeanour concerned with abuses of public office.⁹¹ By the eighteenth century it had expanded to include what we now call blackmail.⁹²

The late eighteenth and nineteenth centuries were particularly important in the development of 'homosexual extortion' as a distinct offence. In the 1770s it was established that threats to one's character or reputation were equivalent to the threat of personal violence, though sexual offences were not specifically mentioned.⁹³ A number of prosecutions that contained sexual violence between men are concerned with these points of law, however, and indeed, a variety of extortion cases made the comparison of loss of character with the threat of physical violence. Nevertheless, conviction for robbery under threats of menaces, such as disclosing a sexual assault on a man, could only be found if a threat of force or physical violence had been made.⁹⁴

This was the case until the 1820s, which saw the development of homosexual extortion as an offence in its own right. An Act of 1825 established threatening with intent to extort punishable with transportation for life.⁹⁵ Thus, this offence was made into a specific form of robbery for the first time. Further developments resulted in a further statute two years later, which codified accusations of 'infamous' crime as statutory attempted robbery. This Act specified that in order for the offence to be completed, it was necessary for an

⁹⁰ Cocks, *Nameless Offences*, 35.

⁹¹ Anthony Simpson, 'Blackmail Myth and the Prosecution of Rape and Its Attempt in 18th Century London: The Creation of a Legal Tradition, *Journal of Criminal Law and Criminology* 77, no. 1 (1986): 119.

⁹² Simpson, 119.

⁹³ Cocks, *Nameless Offences*, 125.

⁹⁴ Cocks, 125.

⁹⁵ *An Act for the Amendment of the Law as to the Offence of sending threatening Letters*, 6 Geo.4, c.19 (1825).

accusation to be made and for property to have changed hands (see Appendix A).⁹⁶ This Act was simplified in 1847 when the need for money to be exchanged was removed; only the accusation was now necessary (Appendix A).⁹⁷

Hence, over time homosexual extortion developed from being considered part of the broader range of threats to character to being singled out as a unique offence. Upchurch interprets the threat of extortion being set at the harsh penalty of transportation as indicating that ‘the slander to a man’s reputation caused by the accusation of sex between men was considered a graver crime than a homosexual advance’.⁹⁸ Indeed, over time it became easier to prosecute and conviction resulted in harsher punishments than some other forms of assault and robbery.

Prosecuting for extortion after committing a sexual assault was a possible tactic for perpetrators when faced with a prosecution of assault themselves – and this potentiality turned up frequently in the records, specifically twenty-six times. The first case found was reported in *The Times*; Richard Cope accused an unnamed man of an ‘infamous crime’. A further report reveals that during Cope’s punishment in the pillory he was ‘severely pelted by the populace’.⁹⁹ Prosecutions for this offence increased throughout the period; three of nine reported in the *Proceedings* in the 1830s contained evidence of sexual assaults between men. In total however, 18% of extortion cases which came to the Old Bailey at the start of the period studied contained evidence of sexual assault, which had increased to 25% towards the end.

Extortion, highway robbery, and robbery constituted the most frequently occurring theft offences which contained evidence of sexual violence. However, sexual assaults can be found in other, lesser, charges too. For example, two cases of larceny are featured, one for grand and the other for simple larceny.¹⁰⁰ Larceny is the most common offence reported in the *Proceedings*.¹⁰¹ Two other cases are of theft from a specified place, both dwelling

⁹⁶ Cocks, *Nameless Offences*, 126.

⁹⁷ *An Act for extending the Provisions of the Law respecting Threatening Letters and accusing Parties with a view to extort Money*, 10 & 11 Vict, c.66 (1847).

⁹⁸ Upchurch, *Before Wilde*, 59.

⁹⁹ *The Times*, 6 April, 11 April 1785 and 10 April 1786.

¹⁰⁰ *OBP*, trial of Richard Bold, September 1816 (t18160918-172); trial of John Wallis, October 1833 (t18331017-20). Grand larceny was abolished and replaced by simple larceny in 1827, incorporating ‘petty larceny’ too.

¹⁰¹ Emsley et al, ‘Crime and Justice - Crimes Tried at the Old Bailey’, *OBP*, accessed 6 October 2019.

houses.¹⁰² This location was almost always featured in this crime.¹⁰³ Unique is one case of threatening behaviour, which appeared in 1846. It was one of just eleven cases that decade, and of only thirty ever reported, stating ‘feloniously, and with menaces, demanding money’. However, James Button testified that while in a watering place in Hyde Park Corner appraiser John Fielding Daniel ‘pushed up against me, and passed his hand round, and caught hold of me’.¹⁰⁴ Overall though, the above offences were only taken when highway robbery was falling off in usage, with sexual assaults appearing to split into more specific offences.

Another theft offence that appeared, though only twice, was picking pockets. In the earlier case, William Statia argued that Michael Tooley ‘behaved in an indecent manner’. In Tooley’s statement, he notes that this imputation had been made to get off the robbery charge.¹⁰⁵ Prosecutions tended to be low before the early nineteenth century, potentially due to the unwillingness of men to come forward when robbed by women (especially sex workers), in addition to the difficulty of catching skilled pickpockets as well as reluctance to use the death penalty for such an offence.¹⁰⁶ However the number found guilty and liable to be given the death penalty was small, with partial verdicts common.¹⁰⁷ Indeed, no pickpocket was hanged after 1750.¹⁰⁸ Prosecutions increased massively during the 1810s through to the 1840s, after the death penalty was removed. Nevertheless, only two have been found to have contained evidence of male on male sexual assault, shortly after this change. In the later case, a leather seller was accused of taking ‘indecent liberties’ with a man near Fleet Bridge.¹⁰⁹

Evidence of sexual violence can also be found outside the categories of sexual and theft offences, in crimes which primarily dealt with harming another individual. Of these, neither contained sexual assault as the primary charge, and both were from the Middlesex and

¹⁰² *OBP*, trial of John Aylett and Henry Johnson, December 1838 (t18381217-348); trial Thomas Williams, August 1850 (t18500819-1398).

¹⁰³ Peter King and Richard Ward, ‘Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery’, *Past & Present* 228, no. 1 (2015): 184.

¹⁰⁴ *OBP*, trial of James Button, August 1846 (t18460817-1584).

¹⁰⁵ *OBP*, trial of William Statia, October 1781 (t17811017-20).

¹⁰⁶ Beattie, *Crime and the Courts*, 180.

¹⁰⁷ Deirdre Palk, *Gender, Crime and Judicial Discretion 1780-1830* (Suffolk: Boydell & Brewer, 2006), 76.

¹⁰⁸ Devereaux, ‘Execution and Pardon’, 453.

¹⁰⁹ *OBP*, trial of Jeremiah Healy and John Smith, April 1811 (t18110403-95).

Westminster Sessions. One examination at the Westminster Sessions from 1827 was simply labelled assault, and another the following year at the Middlesex Sessions was titled 'Misd/Assault'. In this latter case, musician Charles Calcott stated a man 'thrust his hand into my Breeches again...he pushed me against the Railing of the Square'.¹¹⁰ Assaults were uncommon at quarter sessions and were usually dealt with summarily.¹¹¹ Indeed, before 1829 magistrates at police courts consistently dropped charges of sexual assault to common assaults and imposed fines.¹¹² Assaults deemed more serious were tried at the Old Bailey, for instance two were cases of wounding towards the end of the period of study, with sexual assaults as tertiary to this offence.¹¹³ Even appearing once was a case of murder from 1786, one of just four that year. In the trial, William Trott attested how the deceased had 'clapped his two hands on each side my face, and kissed me'.¹¹⁴ However, these were infrequent compared to sexual and theft offences.

Conclusion

This chapter has outlined a method that makes it possible to uncover instances of sexual violence between men in court records and newspaper reporting of trials in the late eighteenth and nineteenth centuries. Collection of evidence via the use of this method from the Middlesex and Westminster Sessions Papers, *Proceedings*, and newspaper reporting demonstrates that male on male sexual violence was dispersed throughout a wide variety of offence categories, not only the more obvious charges such as sodomy and indecent assault, but other sexual crimes, theft offences, and charges related to harm.

Distinctions between courts were generally followed, with the Middlesex and Westminster Sessions trying misdemeanours and the Old Bailey felonies, though some offences such as attempted sodomy and extortion were occasionally prosecuted at both. Sexual assaults also came to light when investigating examinations simply categorised as 'misdemeanour', and no doubt more are hiding in the uncatalogued Middlesex and Westminster Sessions Papers.

¹¹⁰ LMA, information of Charles Calcott and George Hosey, 15 May 1828 (MJ/SP/1828/05/079).

¹¹¹ Drew Gray, *Prosecution and Social Relations: The Summary Courts of the City of London in the Late Eighteenth Century* (London: Palgrave Macmillan, 2009), 115.

¹¹² Upchurch, *Before Wilde*, 110–11.

¹¹³ OBP, trial of Christopher Conlan, November 1838 (t18381126-95); trial of William Tarbuck, December 1849 (t18491217-223).

¹¹⁴ OBP, trial of Robert Clark, December 1786 (t17861213-107).

Similarly, evidence of sexual violence can be found in a great many theft offences, though are more frequent in thefts with violence or extortion. Generally, these contained sexual assaults as either secondary or tertiary to a main charge. Assault related charges were rare, though did occasionally appear.

Therefore, despite the difficulties of recovering consent, this chapter has outlined a method that can be used to separate consenting and non-consenting cases of sexual violence between men. The following chapter will provide further contextualisation for this evidence, while also exploring the courts where cases were heard, and the fluctuations of prosecutions across the period of study.

Chapter Three: Prosecuting Male on Male Sexual Violence

This chapter looks at the prosecution of male on male sexual violence across the period between 1761-1861, which was affected by several important changes in the nature of criminal justice (in both law and practice). It begins with examining who brought prosecutions forward, how they occurred, and London's system of policing, which altered dramatically across the period. Importantly, this period saw a cautious move from private to public prosecution, with the role of the victim being increasingly taken over by the police. The idea of public prosecution was debated throughout the early nineteenth century, with committees arguing for its implementation, though it was not cemented until the latter half of the century.¹

Next, to explore the courts where cases containing sexual violence between men have been uncovered. For instance, summary justice expanded greatly which may have stopped prosecutions going through to the higher courts, but much of this evidence (aside from newspaper reporting of trials) has not survived.² The court system in this period comprised multiple levels: petty (summary) sessions, quarter sessions, and assizes. Prosecutions initially came to the criminal justice system via the summary level, where they were dealt with or fed through to higher courts depending on the seriousness of an offence. London was peculiar as it did not have a quarter session, but a more frequently conducted Middlesex and Westminster Sessions of the Peace, which largely tried misdemeanours. Felonies, and some serious misdemeanours, were usually sent higher to the Old Bailey (later renamed the Central Criminal Court), the capitals' assize-level court. As will be seen, evidence of male on male sexual violence can be found throughout these courts, and in some others too.

Lastly, to compare cases containing evidence of male on male sexual violence against broader prosecution data for the late eighteenth and nineteenth centuries, to determine the possible reasons for fluctuations, and demonstrate increased press interest in the

¹ Paul Rock, 'Victims, Prosecutors and the State in Nineteenth Century England and Wales', *Criminal Justice* 4, no. 4 (2004): 331–54.

² See Clive Emsley, *Crime and Society in England, 1750–1900*, 3rd edition, 2005 (Harlow: Pearson Education Limited, 1987), 202–11 for an overview.

reporting of such acts. Therefore, this chapter will examine the shifting legal framework in London and its relationship to sexual violence against men, providing the underlying context for the thesis.

How did prosecutions occur?

What happened after a crime had been committed? Victims had the option of attempting to apprehend the perpetrator themselves, perhaps with assistance from others, but also to alert constables or magistrates. The strong impulse for victims to seek out perpetrators was eroding by the end of the 1780s, not least due to the effectiveness of the Bow Street Runners.³ Therefore, the detection and apprehension of alleged perpetrators increasingly became the preserve of professionalised constables rather than victims during the mid-late eighteenth century. However, it was not until the following century that the police increasingly took on the role of prosecutor, leaving victims to bear the brunt of prosecution costs.

In the summary courts expenses were affordable for most, with remuneration often possible.⁴ However, prosecuting at higher courts could be expensive, and consume a large proportion of one's wages. In the late eighteenth century, charges at Quarter Sessions were often less than £1, but at Assizes could run from £1 to £4.⁵ This was a significant amount of a worker's income. Male domestic servants could expect to earn £2-3 per year, and footmen perhaps £8. A skilled labourer was more likely to be able to afford the costs since they could expect to earn between 2 shillings 6 pence to 5 shillings as the period progressed for a day's work; as there were 20 shillings in a pound this was still at least eight day's work.⁶ Prosecutors wishing to utilise the Court of King's Bench could expect to pay high charges of

³ John M. Beattie, *The First English Detectives: The Bow Street Runners and the Policing of London, 1750–1840* (New York: Oxford University Press, 2012), 8-9.

⁴ Drew Gray, *Prosecution and Social Relations: The Summary Courts of the City of London in the Late Eighteenth Century* (London: Palgrave Macmillan, 2009), 19.

⁵ John M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton: Princeton University Press, 1986), 46.

⁶ Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'London History - Currency, Coinage and the Cost of Living', *Old Bailey Proceedings* (hereafter *OBP*), <https://www.oldbaileyonline.org/static/Coinage.jsp>, accessed 5 February 2019; L.D. Schwarz, *London in the Age of Industrialisation: Entrepreneurs, Labour Force and Living Conditions, 1700-1850* (Cambridge: Cambridge University Press, 1992), 168.

£12 to £23 depending on their legal counsel.⁷ In the mid-nineteenth century Quarter Sessions costs were often between £3 and £10, and sometimes more, while at the Assizes were high between £16 and £22.⁸ Hence, the decision to prosecute was significant.

These costs could be prohibitive for many, especially in times of economic hardship such as the 1840s.⁹ Time off from labour was required. What's more, witnesses may have required remuneration of travel costs and accommodation. Sometimes witnesses needed to wait around the Old Bailey for ten to twelve days for a trial to be heard in 1819.¹⁰ These costs could be detrimental and a disincentive to prosecute for many. Furthermore, these costs may have encouraged informal settlements, and by extension have hidden evidence of sexual assault.

However, legal mechanisms for relieving expenses existed. Although some associations were created to assist in costs of prosecution, they were private and only protected the interests of their members.¹¹ They were out of reach for the poorer classes. The 1750s saw some provision made for poor prosecutors and witnesses on a successful conviction of a felony, which was extended to all prosecutors in 1799.¹² Previously, in 1778, it was made possible to offer reimbursement for an unsuccessful prosecution. However, the biggest changes occurred in the early nineteenth century. In 1815 allowances were made to meet the Clerk of Assize and of the Peace costs and the Bennet's Act of 1818 allowed expenses for loss of time to prosecutors and witnesses; both applied in felony cases regardless of the outcome of the case. Perhaps most importantly, the 1826 Criminal Justice Act provided expenses for prosecutors as well as some witnesses, including for certain misdemeanours for the first time (see Appendix A). Cocks notes that prosecutions for homosexual misdemeanours increased significantly following this act, especially during the 1830s and

⁷ Norma Landau, 'Indictment for Fun and Profit: A Prosecutor's Reward at Eighteenth-Century Quarter Sessions', *Law and History Review* 17, no. 3 (1999): 534.

⁸ David Philips, *Crime and Authority in Victorian England: The Black Country, 1835–1860* (London: Croom Helm, 1977), 117.

⁹ David Taylor, *Crime, Policing and Punishment in England, 1750-1914* (Hampshire: Macmillan, 1998), 26.

¹⁰ David Bentley, *English Criminal Justice* (London: Hambledon, 1998), 154.

¹¹ Barry S. Godfrey and Paul Lawrence, *Crime and Justice, 1750-1950* (Cullompton, U.K: Willan, 2005), 34.

¹² Taylor, *Crime, Policing and Punishment*, 110.

1840s.¹³ A similar trajectory has been found in the cases of sexual assault collected here.¹⁴ The allowance for expenses, combined with the rise of public prosecutions, increased the likelihood that poorer prosecutors could bring sexual assaults to light.

So, ways did exist for prosecutors, the accused, and their witnesses to receive expenses for trials. However, despite these provisions, Beattie concludes that they were of 'marginal importance' as an incentive to prosecute.¹⁵ Indeed, in 1845 criminal law commissioners stated that victims would still rather give up on a prosecution than spend time, labour, and money.¹⁶ However, the idea that courts were only used by the elite as a control mechanism has been thoroughly refuted, as they were in fact used by a cross section of the community.¹⁷ Indeed, as is detailed in Chapter Five, victims of sexual assaults were generally of the lower and middle classes.¹⁸

That said, the police were increasingly involved in the prosecution of sexual assault. Policing practices changed significantly across the period under study, developing into the modern system of policing in place today. However, while the novelty of this style of policing has been expressed by traditional historiographical accounts, more recent studies have focused on the continuity of practices and the importance of local regulation, rather than their originality.¹⁹

In studying instances of sexual violence between men, the role of the police is important to understand for several reasons. First, developments in policing organisation and practice, such as the creation of the Metropolitan Police, meant that London became increasingly policed across the period of study. Furthermore, the regulation of public spaces was central to these developments.²⁰ As such, sexual behaviour between men was more likely to be

¹³ Harry Cocks, *Nameless Offences: Homosexual Desire in the Nineteenth Century* (London: I. B. Tauris, 2003), 44.

¹⁴ See below, 85-90.

¹⁵ Beattie, *Crime and the Courts*, 48.

¹⁶ Taylor, *Crime, Policing and Punishment*, 118.

¹⁷ John Brewer and John A Styles, *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries* (New Brunswick, N.J.: Rutgers University Press, 1980); Peter King, 'The Summary Courts and Social Relations in Eighteenth-Century England', *Past & Present*, no. 183 (2004): 125-72.

¹⁸ See Chapter Five, 179-185.

¹⁹ For a traditional account see T. A. Critchley, *A History of Police in England and Wales* (London: Constable, 1967); for a revisionist explanation see Clive Emsley, *The English Police: A Political and Social History* (Harlow: Longman, 1996).

²⁰ Taylor, *Crime, Policing and Punishment*, 83.

detected, and policemen were more likely to become victims of sexual assault.²¹ Second, the power to arrest based on a suspected intention of committing a felony meant that more men could at least be arrested, and potentially convicted, with just one witness, usually the arresting officer.²² Third, during the mid-nineteenth century the police increasingly assumed the role of prosecutor in place of victims, though this only became firmly established near the end of the period of study with the County and Borough Police Act of 1856.²³ For these reasons, the role of the police is central to understanding sexual assaults committed between men.

Historiography has often split developments of policing practices into two distinct phases, an 'old' system which existed to the middle of the nineteenth century, when it came to be superseded by a 'new' system – though it should be stressed that in London these 'new' forms of policing were fairly well embedded by the early 1840s. The 'old' system consisted of three major parts. First, 'amateur parish constables', who could help victims of crime and investigate cases of felony, but could only arrest for assault if they saw it committed. Second, mostly urban professional or semi-professional 'acting constables', who were usually also employed in another occupation. Third were urban 'watch forces' who patrolled the streets and were paid by tax but could only arrest suspicious 'night walkers'. It is also important to note the creation of small forces of constables in the mid-eighteenth century such as the Bow Street Runners, under the control of a full-time stipendiary magistrate.²⁴

This system has been categorised as semi-professional or amateurish in makeup, and was often poorly paid. It was being condemned as inadequate towards the end of the eighteenth century.²⁵ In terms of their role, constables were 'neither a preventive nor a detective police', though could sometimes do some light detective work.²⁶ On the other hand, the mid-late eighteenth century saw a variety of legislation aimed at increasing the preventative powers of magistrates and constables.²⁷ Constables gained more power to arrest and

²¹ See Chapter Five, 146-149.

²² Paul Lawrence, 'The Vagrancy Act (1824) and the Persistence of Pre-Emptive Policing in England since 1750', *The British Journal of Criminology* 57, no. 3 (2017): 513–31.

²³ Douglas Hay and Francis Snyder, *Policing and Prosecution in Britain 1750–1850* (Oxford: Clarendon Press, 1989), 3–52.

²⁴ For a brilliant examination of the Runners, see Beattie, *The First English Detectives*.

²⁵ Godfrey and Lawrence, *Crime and Justice*, 14.

²⁶ Emsley, *Crime and Society*, 222.

²⁷ Lawrence, 'The Vagrancy Act', 515–16.

convict with minimum due process, and by the early nineteenth century this power to arrest with suspicion had been embedded. The period also saw the implementation of salaried magistrates and career police officers, thus moving towards a more specialised system.²⁸

One of the most significant pieces of legislation in establishing the 'new' system of policing was the Metropolitan Police Act (1829), pushed through parliament by Home Secretary Robert Peel. It established a more professional, and uniformed police. Society was to be patrolled 'by a paid and bureaucratically organized police force which was more organized and more intrusive than before'.²⁹ The primary duty of the Metropolitan Police was the prevention of crime, although the role of deterrence and pre-emptive action has been a topic of some debate.³⁰ The difference in duties between the old and new were not markedly different.³¹ However, the police were intended and perceived to be different and new at the time, not least in the manner of being uniformed.³²

Subsequent legislation consolidated the professional role of the police. The 1835 Municipal Corporations Act required the establishment of police forces under control a watch committee, and the 1839 Rural Constabulary and 1856 County and Borough Police Acts mandated the creation of police forces in all counties and boroughs, in addition to creating an inspectorate to ensure efficiency of the force. This final act has been said to have 'laid the foundation of modern policing in England and Wales'.³³

Traditional, and mostly earlier twentieth century histories have tended to emphasise the revolutionary nature of the 'new' police and their efficiency in contrast to the 'old' system, with more recent studies examining continuity in practices. For example paid policing did not begin in the nineteenth century, and London had district police offices before the 1829 Act.³⁴ Furthermore, the idea of a reform of policing had been discussed in parliament in the decade before the Act, and in the late eighteenth and early nineteenth centuries by Patrick

²⁸ See Ruth Paley, 'The Middlesex Justices Act of 1792: Its Origins and Effects' (PhD, University of Reading, 1983).

²⁹ Taylor, *Crime, Policing and Punishment*, 3.

³⁰ Emsley, *The English Police*, 25; Andrew Ashworth and Lucia Zedner, *Preventive Justice* (Oxford: Oxford University Press, 2014), 27–50; Lawrence, 'The Vagrancy Act'.

³¹ Godfrey and Lawrence, *Crime and Justice*, 25.

³² Taylor, *Crime, Policing and Punishment*, 72.

³³ Taylor, 79.

³⁴ John Briggs et al., *Crime and Punishment in England: An Introductory History* (London: UCL Press, 1996), 121.

Colquhoun, and the Fieldings, among others.³⁵ While the 'new' police are often said to be more efficient than the 'old' system, this is debateable.³⁶ Indeed, eighteenth-century policing was certainly effective at combating some forms of crime, though less so in implementing unfavourable legislation.³⁷ Low pay was no doubt a significant factor in a magistrate's zeal in combating crime. Therefore, there was not a clear development from an inefficient 'old' to a suddenly effective 'new' system. Rather, police reform was gradual and often generated locally, with the 1830s being 'the culmination of police reform, rather than its beginning, and the final success of centralization', according to Harris.³⁸ Despite this, the concept of 'old' and 'new' police remains powerful in police historiography.³⁹

How is this relevant to the present study? First, Upchurch has demonstrated that most police-court activity concerning sexual relations between men occurred in the West End parishes, which were considered the best policed.⁴⁰ Second, beat policing arguably increased the surveillance of public spaces through uniformed patrols, resulting in more evidence of sexual assault able to be recovered. Third, many policemen claimed they were propositioned for sex, and constables are featured prominently in evidence uncovered for this thesis.⁴¹ Finally, Cocks has argued that despite the police becoming increasingly involved in prosecution, there was a '*de facto* toleration of private offences by the police'.⁴² Hence, the police only got involved when they had to, such as when crimes were public – or made so by reporting.

Developments in policing practices meant that sexual violence between men was increasingly likely to be brought into public view. As will be explained in Chapter Five, a large portion of sexual assaults took place in public, making them more likely to be detected by the police. Indeed, control of public space was a fundamental question for the police. Not

³⁵ Taylor, *Crime, Policing and Punishment*, 74.

³⁶ Emsley, *Crime and Society*, 230.

³⁷ Andrew T. Harris, *Policing the City: Crime and Legal Authority in London, 1780-1840* (Columbus: Ohio State University Press, 2004), 27; Godfrey and Lawrence, *Crime and Justice*, 25.

³⁸ Harris, *Policing the City*, 153.

³⁹ David G. Barrie and Susan Broomhall, eds., *A History of Police and Masculinities, 1700-2010* (Oxon: Routledge, 2012), 5.

⁴⁰ Charles Upchurch, *Before Wilde: Sex Between Men in Britain's Age of Reform* (London: University of California Press Ltd, 2009), 107–8.

⁴¹ See Chapter Five, 146-149.

⁴² Cocks, *Nameless Offences*, 51.

only that, but by the virtue of their role police constables and their precursors became victims of sexual assaults. At the same time, the assumption of the prosecutorial role meant that the police had to deal with sexual assaults more frequently.

In what courts have cases of sexual violence been found?

After a sexual assault or other crime had been alleged and the accused had been apprehended, the latter was taken before a magistrate. At this stage multiple routes of action could be taken depending on evidence, which heavily affected the prosecution of crimes, and especially cases containing sexual assaults. Complaints could be settled informally with or without a summary conviction, a defendant could be bound to attend the Middlesex or Westminster Sessions before a bench of magistrates, or be sent for a trial by jury at the Old Bailey. It is important to note the major role magistrates played in the dispensing of justice. As Taylor has written, 'the exercise of discretion was an important element in the actual working of the law'.⁴³ This is significant as in petty sessions magistrates decided whether to dismiss cases, to summarily convict, or send a case to a higher court for trial. Importantly, this affected where evidence of sexual violence can now be found, in the records that survive.

Prosecutions containing evidence of sexual violence were heard at many courts, signifying how widespread it was in the late eighteenth and nineteenth centuries. London was unique in some respects in the administration of the court system. Magistrate courts were based in locations across the capital and expanded greatly throughout the period of study. It also had the Middlesex Sessions of the Peace in place of quarter sessions, and the Old Bailey (later the Central Criminal Court) instead of an assize court. Furthermore, the Court of King's Bench (or Queen's Bench when a female monarch was reigning) could be utilised as a higher, more public and expensive, court. However, other, more unique courts have been uncovered, including the Common Pleas and Bail courts. Discussion of these courts is split between the types of prosecution, specifically, whether a sexual assault was the primary, secondary, or tertiary charge being prosecuted. As will be shown, the proportions of each differed depending on the court.

⁴³ Taylor, *Crime, Policing and Punishment*, 15.

Victims of crime, including sexual assaults, were incredibly important for most of this period in getting justice for an alleged criminal act. They were certainly not passive in this role.⁴⁴ Private prosecution was the primary way of initiating formal criminal proceedings, thought to help prevent an oppressive state.⁴⁵ Hay estimated that 80% of all criminal cases from the mid-eighteenth to mid-nineteenth century were private prosecutions.⁴⁶ However, in the early-mid nineteenth century prosecutions were increasingly taken over by the police. This shifted the victim's role in the criminal justice process from 'essential' to 'symbolic', as Kearon and Godfrey propose.⁴⁷ In contrast to perpetrators, often little is known about the victim of crime. In one recent study, much more was found about perpetrators and property than the victim, who 'remains a shadowy figure...the real star was the court process itself'.⁴⁸

The court used for an offence depended on the perceived seriousness of the crime. Important was the distinction between felonies and misdemeanours, which dates from the Middle Ages.⁴⁹ Misdemeanours were generally punished summarily, by fines or short periods of imprisonment in a House of Correction, while felonies were seen as requiring more severe punishment, such as the death penalty. To complicate matters some felonies could be tried summarily, and some misdemeanours (such as assaults) could be tried in a higher court on indictment too.⁵⁰ Sexual assaults have been found in charges of both misdemeanour and felony, including where only the broader offence of misdemeanour was stated, rather than a specific offence.⁵¹

Most Londoners obtained their experiences of the law from the summary courts.⁵² These courts dealt with misdemeanours such as assault, breaches of the peace, and regulatory offences, which could be punished by magistrates without the need to send a case to a higher court. Furthermore, a significant number of perpetrators were discharged without

⁴⁴ Godfrey and Lawrence, *Crime and Justice*, 45.

⁴⁵ Rock, 'Victims, Prosecutors and the State', 333.

⁴⁶ Douglas Hay, 'Controlling the English Prosecutor', *Osgoode Hall Law Journal* 21, no. 2 (1983): 167.

⁴⁷ Tony Kearon and Barry S. Godfrey, 'Setting the Scene: A Question of History', in *Handbook of Victims and Victimology* (London: Routledge, 2007), 24.

⁴⁸ Kathrine M. Reynolds and Carol Liston, 'Victims as Prosecutors: England 1800–1835', *Societies* 9, no. 2 (2019): 12.

⁴⁹ Taylor, *Crime, Policing and Punishment*, 10.

⁵⁰ Taylor, 11.

⁵¹ See Chapter Two, 47–58.

⁵² Gray, *Prosecution and Social Relations*, 4.

formal punishment.⁵³ The expansion of summary justice was one of the most significant shifts in the criminal justice system across the nineteenth century, allowing offences previously dealt with in Quarter Sessions to be punished more swiftly. Summary justice was expanded significantly in Peel's consolidation of criminal law in the 1820s.⁵⁴ This can be evidenced in manuals for magistrates to guide them in their duties and the legal process which proliferated in the late eighteenth and early nineteenth centuries, such as Richard Burns *The Justice of the Peace and Parish Officer*, with fifteen editions published in his lifetime.⁵⁵ New police courts were created, though these were used in a similar way to the older courts.⁵⁶ The 1840s and 1850s also saw a number of acts concerned with increasing summary justice.⁵⁷

Importantly, in 1828 common assault was made a summary offence, reflecting usual practice of magistrates dealing with it at summary level. Assault was treated as a civil rather than criminal offence, with non-lethal assaults regarded as disputes between individuals. As such, magistrates saw it as their role to act as mediators.⁵⁸ It is possible that some cases containing sexual assault between men may have been treated in this way and dealt with summarily. Indeed, newspaper reports reveal a number of sexual assaults between men – especially the offence of indecent assault – which were heard at the summary courts. However, one scholar found only a couple of cases relating to sexual acts between men in the physical records which remain.⁵⁹ Unfortunately, the survival rate of examinations at the summary courts are poor and often lack detail, and hence are not the focus in this thesis.⁶⁰

⁵³ Gray, 28.

⁵⁴ Especially the *Malicious Trespass Act*, 1 Geo.4, c.56 (1820) and *Larceny Act*, 7 & 8 Geo.4, c.29 (1827).

⁵⁵ For a discussion, see Peter King, *Crime and the Law in England 1750–1840: Remaking Justice from the Margins* (Cambridge: Cambridge University Press, 2006), 1–69; For other justices, see Ruth Paley, *Justice in Eighteenth-Century Hackney: The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book* (London: London Record Society, 1991); Gwenda Morgan and Peter Rushton, eds., *The Justicing Notebook (1750–64) of Edmund Tew, Rector of Boldon* (Woodbridge: Boydell Press, 2000).

⁵⁶ Taylor, *Crime, Policing and Punishment*, 109.

⁵⁷ *Juvenile Alleged perpetrators Act*, 10 & 11 Vict, c.82 (1847); *Criminal Procedure Act*, 16 & 17 Vict, c.30 (1853); *Criminal Justice Act*, 18 & 19 Vict, c.126 (1855).

⁵⁸ Gray, *Prosecution and Social Relations*, 92–93.

⁵⁹ Gray, 134.

⁶⁰ The summary courts of the City of London were held in the Justice Rooms of Guildhall and Mansion House. Minute books for both are held at the London Metropolitan Archives and detail court business, with information relating to defendants, prosecutors, witnesses, as well as limited information about examinations and offences. However, they rarely described offences in detail, see Peter King, 'War as a Judicial Resource. Press Gangs and Prosecution Rates, 1740–1830', in *Law, Crime and English Society 1660–1840*, ed. Norma Landau (Cambridge: Cambridge University Press, 2002), 109; Greg T. Smith, *Summary Justice in the City: A Selection of Cases Heard at the Guildhall Justice Room, 1752–1781* (Woodbridge: Boydell Press, 2013);

Here, evidence of sexual assault heard at magistrate courts has been uncovered solely in newspaper reports. Such courts were the ‘bottom rung of England’s criminal justice hierarchy’, Auerbach notes.⁶¹ As detailed earlier, the period of study saw important changes in policing, including the creation of several magistrate courts. Fear of crime, anxieties due to the French Revolution, the rise of radicalism, the Gordon Riots, and corrupt ‘trading justices’, among other reasons, were all impetuses for reform of policing practices.⁶² One result was the Middlesex Justices Act (1792), which established several magistrate courts based on the Bow Street model – already a court for many decades – specifically, Great Marlborough Street, Hatton Garden, Queen Square, Shadwell, Union Hall, Whitechapel, and Worship Street.⁶³ Each court was staffed by stipendiary magistrates and several constables. These courts were equal in status; however, they did not have a clearly defined geographical area of responsibility.⁶⁴

Furthermore, the survival rate is patchy. Fifty-five books are available for Guildhall, ranging from 1752 to 1796 though with significant gaps, such as between 1752 – 1761, and most of 1777. Similarly, for Mansion House seventy-three survive for the period 1784 to 1821, but with gaps between 1790 – 1800 and 1803 - 1819. Combined, these constitute around a third of the original number, Gray, *Prosecution and Social Relations*, 9. Due to this incompleteness, and especially the lack of detail, it was not deemed worthwhile to consult the minute books for the current thesis.

⁶¹ Sascha Auerbach, *Armed with Sword and Scales: Law, Culture, and Local Courtrooms in London, 1860–1913* (Cambridge: Cambridge University Press, 2021).

⁶² Elaine A. Reynolds, *Before the Bobbies: The Night Watch and Police Reform in Metropolitan London, 1720–1830* (Palgrave Macmillan UK, 1998), 84; Jennifer Davis, ‘A Poor Man’s System of Justice: The London Police Courts in the Second Half of the Nineteenth Century’, *The Historical Journal* 27, no. 2 (1984): 310–11.

⁶³ *Middlesex Justices Act*, 32 Geo.III, c.53 (1792).

⁶⁴ For further discussion of the Act, see Paley, ‘The Middlesex Justices Act of 1792’.

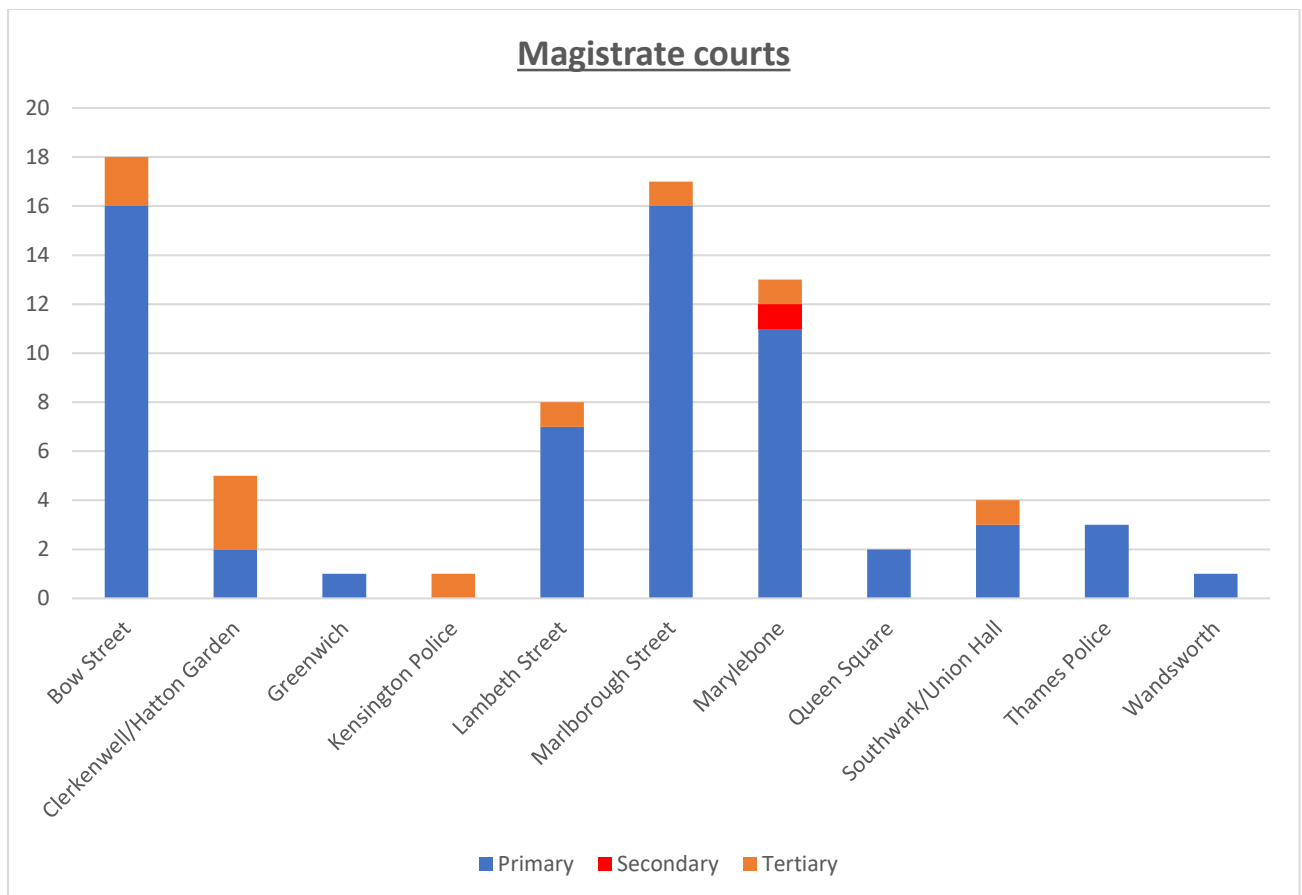


Figure 1 - Types and frequency of prosecutions containing evidence of male on male sexual violence at magistrate courts. Source: *The Times*, *Morning Post*, *Morning Chronicle*, *Lloyd's Weekly Newspaper*, *Reynolds's Weekly Newspaper* (1778-1860)

Prosecutions leaned largely in favour of primary cases of sexual assault at most of the police courts uncovered, indicating that disclosure of a sexual assault in robbery cases, and the use of sexual assault as a defence tactic was more prevalent at higher courts with more severe punishments. The court that appears most frequently – partially due to its longer history – was Bow Street. This court predated the others, having been created in the mid eighteenth century, much due to Sir John Fielding's work as a magistrate.⁶⁵ However, the creation of other magistrate courts diminished the unique status of Bow Street, with its role becoming increasingly limited, especially after the creation of the Metropolitan Police in 1828. It became solely a police court after the Police Act (1839). It heard largely primary cases, such

⁶⁵ See the exceptional Beattie, *The First English Detectives*.

as an attempted sodomy prosecution in early 1778, though also a few tertiary cases during its time, for example a stealing case in 1842.⁶⁶

Along with Bow Street, two other courts were located squarely in Westminster: Marlborough Street and Queen's Square, though each differed significantly in the proportion of sexual violence evidence uncovered. Primary cases were reported at the former since the late 1800s, after the *Morning Chronicle* reported that an 'abominable assault' had been committed by a waiter who worked at the 'Bull and Mouth'.⁶⁷ This court appeared in every decade for the rest of the period at least once, including the penultimate prosecution uncovered, an indecent assault, in early 1860.⁶⁸ On the other hand, Queen's Square was only reported twice, with both cases within a decade of each other. In one, the court heard that after committing 'indecent attempts' on two men, John Hayworth was pelted by a mob with so much mud that he 'looked like a running pillar of manure', before he was arrested.⁶⁹

Marylebone court was well represented, despite being open for a shorter period than most, as it was created with an Act of 1821.⁷⁰ It saw the only secondary case uncovered for a court other than the Old Bailey, and concerned a ballet dancer disguised as a woman.⁷¹ Its only tertiary case, for extortion, was held in 1823, with all others in the 1840s and 1850s.⁷² Magistrates at Marylebone also dealt with the high profile case of the Earl of Kingston.⁷³

East London was covered by a court in Lambeth Street, Whitechapel, opened at the same time as Marylebone in 1821 after the closure of Shadwell – no cases were uncovered that contained evidence of sexual violence prosecuted at Shadwell.⁷⁴ Similarly, no cases have been uncovered for Worship Street, Shoreditch, despite being open the entire period of study. Most of Lambeth Street's prosecutions were indecent assaults, including one long

⁶⁶ *Morning Post*, 05 February 1778; 23 August 1842.

⁶⁷ *Morning Chronicle*, 25 October 1809.

⁶⁸ *Morning Post*, 27 March 1860.

⁶⁹ *Morning Post*, 18 July 1816.

⁷⁰ Reynolds, *Before the Bobbies*, 114.

⁷¹ *Lloyd's Weekly Newspaper*, 22 April 1849.

⁷² *Morning Chronicle*, 3 July 1823.

⁷³ *The Times*, 1 April 1848.

⁷⁴ Shadwell was regarded as an unfavourable police court for magistrates due to its location in the East End, see Paley, 'The Middlesex Justices Act of 1792', 234–42.

2610 word report. It contained a primary case: the perpetrator, who held an 'official situation in the Ordnance Department in the Tower', was prosecuted for an indecent assault. In his defence, he argued that he had tripped on a stone and fell against the prosecutor, a private in the Coldstream Guards.⁷⁵

Sexual assaults categorised as primary also predominated at several other courts.

Jurisdiction south of the river was held by 'Union Hall' in Southwark. Prosecutions included an indecent assault inside Queen's Bench Prison, also located in Southwark.⁷⁶ Similarly, three reports stated simply 'Thames Police'. Presumably, these are referring to the court created at Wapping in 1798, initially as river police. It later lost its specific river duties in 1844 and moved to Stepney; the prosecutions reported all took place after this move, including two prosecutions against the same perpetrator, who had sexually assaulted two policemen in a train carriage in 1856.⁷⁷ Furthermore, both Greenwich and Wandsworth – jurisdictions implemented separately with the Metropolitan Police in 1828 and later fused together to create South Western – each heard a primary case, both indecent assaults.⁷⁸

On the other hand, tertiary cases were in the majority at two courts in newspaper reporting. For instance, in 1833 a coal merchant was prosecuted for indecent assault after accusing a sailor of using 'the most disgusting familiarities with him' at Hatton Garden.⁷⁹ The only other court was Kensington Police Station, also established with the Metropolitan Police, which heard a case of stealing books and prints. In his defence, the defendant accused William Henry Fielding of indecent assault.⁸⁰ Aside from these two courts, tertiary cases were usually

⁷⁵ *The Times*, 11 July 1842; see also 15 July 1842 and *Morning Post*, 11 July 1842.

⁷⁶ *The Times*, 10 September 1841.

⁷⁷ *Morning Post*, 3 May 1855; *The Times*, 12 June 1856; *Lloyd's Weekly Newspaper*, 15 June 1856.

⁷⁸ *The Times*, 25 October 1837; 1 May 1844. Auerbach, *Armed with Sword and Scales*, 55.

⁷⁹ *Morning Post*, 28 November 1833.

⁸⁰ *Morning Post*, 7 October 1842.

outnumbered by primary cases of sexual assault, suggesting that the use of sexual assault in a defence was generally reserved for higher courts where penalties were more severe.

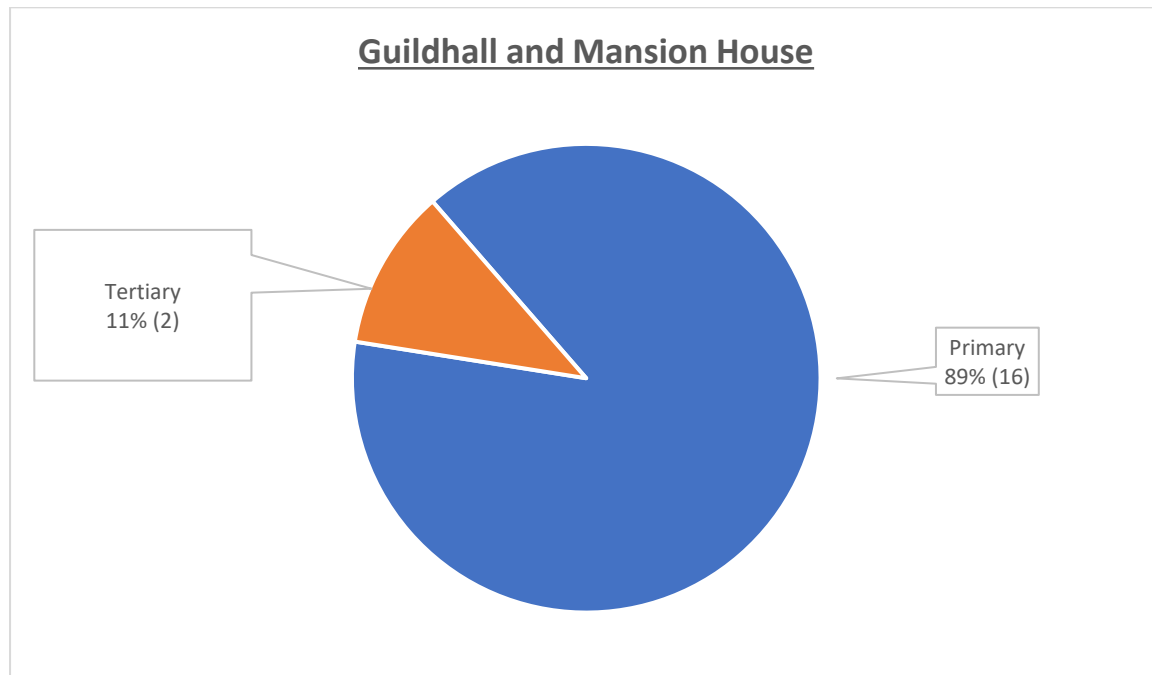


Figure 2 - Types of prosecutions containing evidence of male on male sexual violence at Guildhall and Mansion House. Source: *The Times*, *Morning Post*, *Morning Chronicle* (1776-1853)

The Middlesex Justices Act (1792) excluded the City of London, which continued to use its own courts for the square mile. Mansion House was created in 1735 and led by the Lord Mayor. Guildhall was a continually sitting court from 1737, as part of a 'rotation office' for magistrates to hear prosecutions. Bow Street was later based on this model, though the City of London courts never enjoyed the cultural and social influence of magistrate courts in London.⁸¹ Newspaper coverage is especially useful in uncovering cases of sexual violence tried at these courts, as the surviving records lack the necessary detail to identify consent.

As can be seen in Figure 2, Guildhall heard numerous cases, largely from the late eighteenth and mid-nineteenth century. Furthermore, as with most magistrate courts, the majority were primary cases of sexual assault. For example, four attempted sodomy prosecutions were heard between 1777-1779.⁸² On the other end, Guildhall also tried five prosecutions for indecent assault between 1847-1853.⁸³ In contrast, only one case was heard at Mansion

⁸¹ Gray, *Prosecution and Social Relations*, 18.

⁸² Such as *Morning Post*, 5 April 1777 and *Morning Chronicle*, 10 August 1779.

⁸³ See *Morning Post*, 11 August 1847 and *The Times*, 16 November 1853.

House, an indecent assault committed by an unnamed perpetrator in an unnamed public house in 1850. It is one of the shortest reports collected, containing only 71 words.⁸⁴

Only two tertiary cases have been uncovered at these courts, both heard at Guildhall, and again at either ends of the period. In his defence for ‘assaulting and imprisoning a gentleman’ in 1785, Richard Cope charged the gentleman with an infamous crime.⁸⁵ In 1851, a fireman was charged with accusing a man of committing ‘improper overtures’.⁸⁶ Overall, though, tertiary cases were few and far between at the City of London courts.

If a case was deemed serious enough to warrant trial by jury, it was sent to a Grand Jury to decide on the validity of the prosecution case. Evidence was scrutinised to filter out weak or baseless cases. Witnesses were then sworn in open court in batches to be examined by the jury in private.⁸⁷ Bills could be true (found) or ignoramus (not found). True bills proceeded to trial whereas ignoramus prosecutions ended. Only prosecutors and their witnesses, not defendants, could testify at this stage.⁸⁸ In the 1820s and 1830s about 10% of bills were sent out as the Jury was not satisfied.⁸⁹ Furthermore, an immediate acquittal of the accused was ordered if there was any mistake in the indictment.⁹⁰ Even if a true bill was found, a prosecutor may be unwilling to prosecute further, which resulted in cases of ‘no prosecution’.

If a bill was found to be true, a case containing sexual assault could be sent to the Middlesex or Westminster Sessions of the Peace for trial. The Sessions covered the area north of the Thames and included the City of Westminster but excluded the City of London. They were conducted in Hicks Hall from 1612, though moved to Clerkenwell Green in 1782.⁹¹ In contrast to Quarter Sessions in other counties, the Middlesex Sessions met more frequently – i.e. eight times a year – and had the power to try both misdemeanours and felonies, though in practice most felonies were sent higher. The most common charges found by a

⁸⁴ *The Times*, 23 July 1850.

⁸⁵ *The Times*, 6 April 1785.

⁸⁶ *Morning Post*, 14 August 1851.

⁸⁷ Bentley, *English Criminal Justice*, 131–32.

⁸⁸ Clive Emsley, Tim Hitchcock and Robert Shoemaker, ‘Crime and Justice - Trial Procedures’, *OBP*, <https://www.oldbaileyonline.org/static/Trial-procedures.jsp>, accessed 8 September 2019.

⁸⁹ Bentley, *English Criminal Justice*, 131–32.

⁹⁰ Bentley, 131–32.

⁹¹ Tim Hitchcock, Sharon Howard and Robert Shoemaker, ‘Local Government – Middlesex’, *London Lives, 1690-1800*, <https://www.londonlives.org/static/MiddlesexLocalGovernment.jsp>, accessed 8 September 2019.

Grand Jury in the eighteenth century Sessions were petty felony or misdemeanour.⁹² More serious cases or ones involving recalcitrant defendants or determined prosecutors were most likely to end up at the Sessions.⁹³ Importantly, indecent assault was triable, on indictment, here until 1890.⁹⁴ Other crimes categorised simply as ‘unnatural misdemeanour’ or ‘misdemeanour’ were recovered, as stated earlier.

While before the late eighteenth century at the Old Bailey prisoners were taken from jail to the courtroom, at the Sessions defendants made their own way to court appearances.⁹⁵ Nevertheless, defendants frequently appeared at the Sessions despite this; Landau considers that the administration and clerks of the Sessions were ‘an efficient legal machine’.⁹⁶ Informal settlements, as with summary justice detailed previously, could still be utilised despite bills being found by a Grand Jury. Shoemaker deduced that negotiations took place after a recognizance for appearance at the Sessions had been issued but before the Sessions actually met.⁹⁷ Similarly, research by Landau has shown that the goal of prosecutors at the eighteenth-century Middlesex Sessions was often primarily the extraction of compensation or apologies rather than punishment; ultimately they were civil rather than criminal suits.⁹⁸ Hence, the Middlesex Sessions were an important space used in multiple ways by prosecutors, including victims of homosexual assault.

⁹² Norma Landau, ‘Appearance at the Quarter Sessions of Eighteenth- Century Middlesex’, *The London Journal* 23, no. 2 (1998): 30.

⁹³ Robert Shoemaker, ‘Using Quarter Sessions Records as Evidence for the Study of Crime and Criminal Justice’, *Archives* 20 (1993): 146.

⁹⁴ Emsley, *Crime and Society*, 100.

⁹⁵ Landau, ‘Appearance at the Quarter Sessions’, 30.

⁹⁶ Landau, 31.

⁹⁷ Though this applies before the period under study, Robert Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c.1660-1725* (Cambridge: Cambridge University Press, 1991), 101–11.

⁹⁸ Landau, ‘Appearance at the Quarter Sessions’, 44–45; Landau, ‘Indictment for Fun and Profit’.

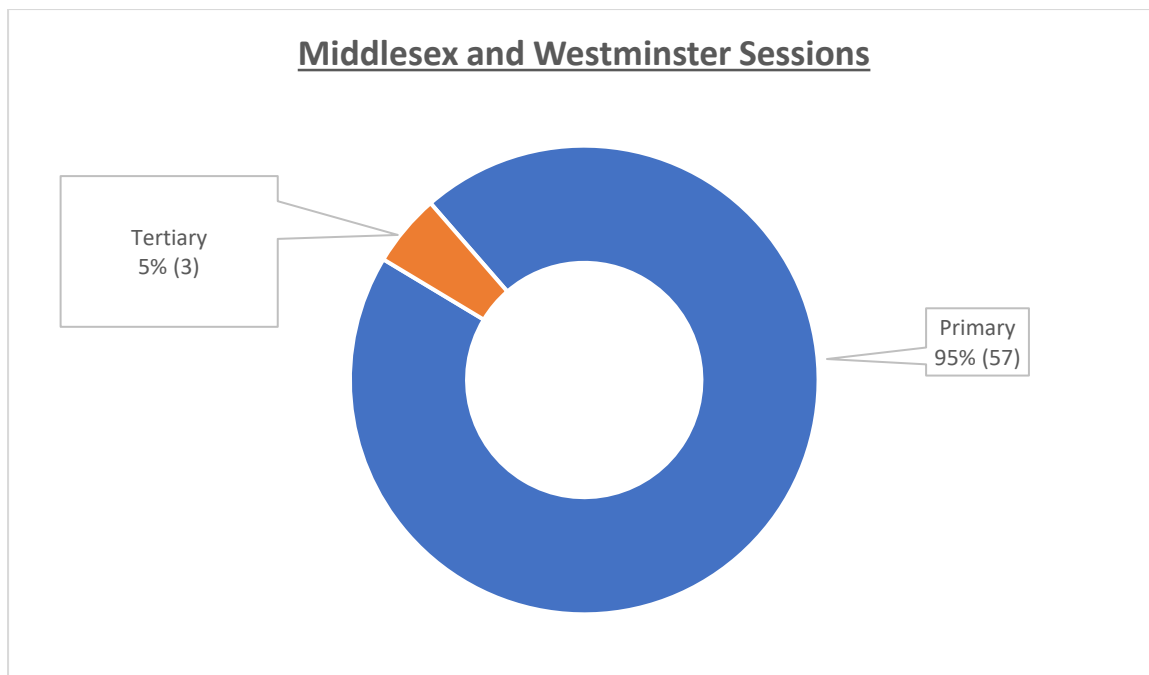


Figure 3 - Types of prosecutions containing evidence of male on male sexual violence at the Middlesex and Westminster Sessions. Source: LMA, MJ/SP (1768-1836), WJ/SP (1827); *The Times*, *Morning Post*, *Morning Chronicle*, *Lloyd's Weekly Newspaper* (1793-1854)

As with newspaper reporting, the vast majority of prosecutions collected for the Middlesex or Westminster Sessions were primary cases of sexual assault, partially due to the use of catalogued indexes created by archivists as keyword searching of records was not possible.⁹⁹ Most cases occurred in the 1820s and 1830s, with only eleven prosecutions uncovered outside of these decades. In the earliest, Richard Coalman accused a man of putting 'his hand to this Informants Breeches and upon his Private Parts', in 1768.¹⁰⁰ Due to a lack of cataloguing of Sessions Papers from the mid-1830s, all six prosecutions collected after this date were found via newspaper coverage. For instance, *Lloyd's Weekly Newspaper* reported in 1843 that a constable was prosecuting William Brown for an indecent assault at the Middlesex Sessions.¹⁰¹ Although most cases have been recovered from the Sessions Papers, newspaper coverage has been fruitful in uncovering additional cases of sexual violence at these Sessions.

Three tertiary cases were heard at the Middlesex Sessions in the early to mid-nineteenth century. For example, the Sessions Papers detailed a case of attempted sodomy that

⁹⁹ See Chapter Two, 41-46, for a description of the method employed.

¹⁰⁰ *London Metropolitan Archives* (hereafter *LMA*), information of Richard Coalman, 7 December 1768 (MJ/SP/1768/12/010).

¹⁰¹ *Lloyd's Weekly Newspaper*, 14 May 1843.

occurred in 1810, though the original examinations are seemingly lost. The two surviving records contain briefs and instructions on an extortion, with details of the case for 'Mister Gurney', presumably leader of the Sessions and judge Sir John Gurney.¹⁰² Hence, a potential case of sexual assault turned into a prosecution for extortion. In another case – found in *The Times* – James Sawrey was prosecuted for stealing a watch from a man named only as Jones in 1847, who he subsequently accusing of taking 'indecent liberties with him'.¹⁰³

Crimes deemed more serious than those tried at the Middlesex Sessions were sent higher. There was no assize court for London, with the metropolitan equivalent being the Old Bailey. This was London's highest court in terms of offences, trying felonies and some serious misdemeanours (such as attempted sodomy). The Old Bailey Sessions were held in the Sessions House adjoining Newgate Prison in the earlier part of the period eight times a year, when its jurisdiction included the county of Middlesex and the City of London north of the Thames. Around 1800 each Session lasted four or five days, with the workload doubling over the next twenty years which extended its length to ten days usually.¹⁰⁴ In 1834 the Old Bailey was renamed the Central Criminal Court, and expanded its jurisdiction to include parts of Essex, Kent, and Surrey. In 1848 a third courtroom was built.¹⁰⁵

Trials were held in public court in front of judge and jury. Entrance to the galleries required a fee until the end of the studied period.¹⁰⁶ Trial Juries in the eighteenth century tended to consist of men from the middle and lower middle classes.¹⁰⁷ The Juries Act (1825) stipulated that they be men of property, between twenty-one and sixty years old. Often, men served in multiple trials. Hence, experienced jurors familiar with court procedure could be a major reason for quick trials.¹⁰⁸ Juries could decide between a guilty, not guilty, or partial verdict. Verdicts were often reached without leaving the jury box, though juries could retire to a

¹⁰² LMA, briefs and instructions in case of Abraham Gardener, June 1810 (MJ/SP/1810/06/003-004). See also J. A. Hamilton and Catherine Pease-Watkin, *Gurney, Sir John (1768–1845), Judge* (Oxford University Press, 2014).

¹⁰³ *The Times*, 24 December 1847.

¹⁰⁴ Bentley, *English Criminal Justice*, 55.

¹⁰⁵ Bentley, 55.

¹⁰⁶ Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'Historical Background - History of The Old Bailey Courthouse', OBP, <https://www.oldbaileyonline.org/static/The-old-bailey.jsp>, accessed 26 September 2019; Rosalind Crone, 'Publishing Courtroom Drama for the Masses, 1820–1855', in *Crime, Courtrooms and the Public Sphere in Britain, 1700–1850*, ed. David Lemmings (Farnham: Routledge, 2012), 196.

¹⁰⁷ Beattie, *Crime and the Courts*, 388.

¹⁰⁸ Emsley et al, 'Crime and Justice - Trial Procedures', OBP, accessed 2 October 2020.

room to deliberate without fire, food, or drink if unable to agree.¹⁰⁹ Those found guilty were sentenced by a judge, who had considerable scope in the application of a range of punishments. Prisoners usually heard their sentences in batches until the 1840s, where immediate sentences following each trial became the norm.¹¹⁰

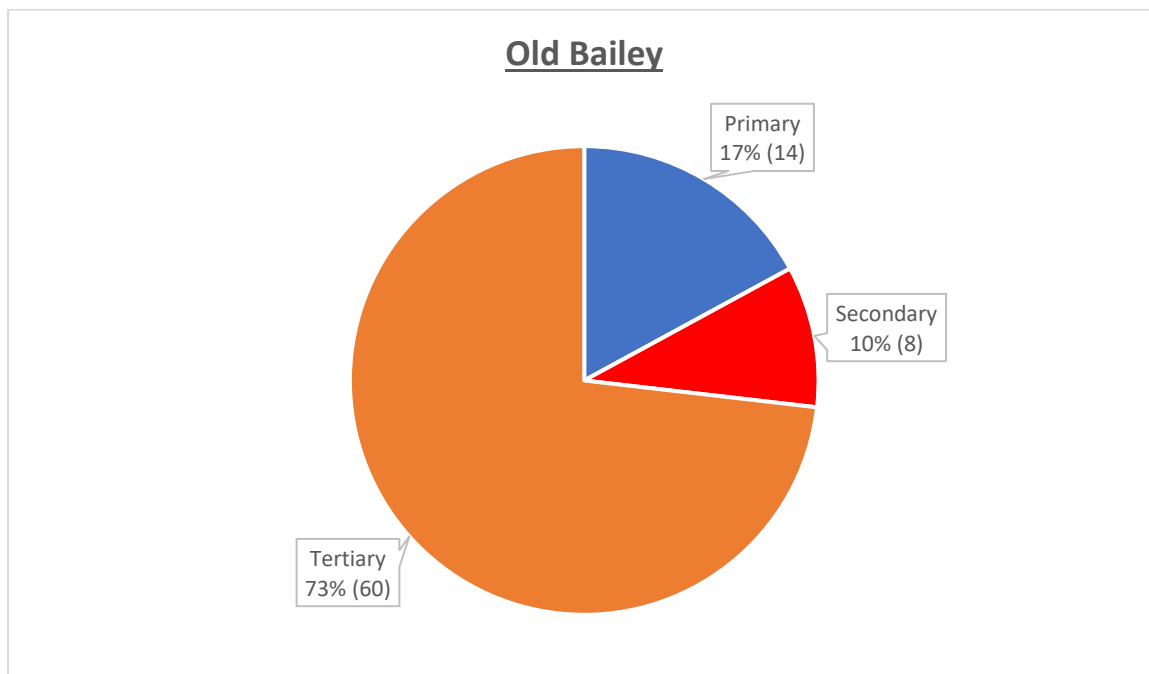


Figure 4 - Types of prosecutions containing evidence of male on male sexual violence at the Old Bailey. Source: OBO (1761-1850); LMA, OB/SP (1786); *The Times*, *Morning Post*, *Morning Chronicle* (1797-1853)

As Figure 4 demonstrates, almost three quarters of prosecutions heard at the Old Bailey containing evidence of sexual violence in the period of study were tertiary cases, in which an alleged sexual assault was being used by a defendant as a defence tactic. The *Morning Chronicle* noted that such allegations were ‘most calculated to injure character’.¹¹¹ The Old Bailey is the only court – aside from two magistrate courts, examined above – where tertiary outnumbered primary cases of sexual assault, with prosecutions recovered throughout the late eighteenth and nineteenth centuries, largely in theft offences such as highway robbery and extortion. For instance, when prosecuted for the former in 1797, Thomas Davis stated that the prosecutor, a Baron, ‘opened the flap of my breeches, and took hold of my t-s in his hand’.¹¹²

¹⁰⁹ Bentley, *English Criminal Justice*, 275.

¹¹⁰ Emsley et al, ‘Crime and Justice - Trial Procedures’, *OBP*, accessed 2 October 2020.

¹¹¹ *Morning Chronicle*, 23 June 1823.

¹¹² *OBP*, trial of Thomas Davis, July 1797 (t17970712-55).

In contrast, primary cases were in the minority of cases uncovered for the Old Bailey. Two thirds were for sexual offences such as sodomy and indecent assault, most of which were collected from newspaper coverage. As mentioned previously, selective reporting in the *Proceedings* from the 1790s resulted in few details in reports of sexual crimes, making newspapers an important source of recovery. Indeed, it is through the newspapers that we learn that the deputy master of Western Grammar School was prosecuted for an indecent assault on a policeman in 1849.¹¹³ However, his trial report in the *Proceedings* stated only that he was acquitted of ‘assaulting...with intent’ and does not mention his occupation.¹¹⁴

Only ten percent of cases contained evidence of a sexual assault committed alongside a theft, hence they were secondary to the main charge. For instance, in a charge of wounding, William Russell stated that a man ‘firmly laid hold of me in the most indecent manner’, before attempting to rob him.¹¹⁵ Committing an act of public indecency in this way as a prelude to extortion was a common tactic for robbers in the early eighteenth century, Bleakley notes, and this evidence shows its continuation.¹¹⁶

Two cases heard at the Old Bailey complicate the categorisation of sexual assaults. In these, the prosecutor and defendant swore sexual assaults against each other, raising the possibility of initially consensual sexual relations which were witnessed, with the parties retrospectively withdrawing their consent. Both were recovered from theft offences, with money ultimately forming the crux of the trials, rather than the presence of a sexual assault. In the earlier case, prosecutor John Warren stated he awoke on a bench in St James’s Park and found the defendant, James Stride, had ‘taken hold of my hand and put it into an indecent place in his breeches’, before robbing him. In his defence, Stride stated Warren ‘kissed me, and behaved very indecent’.¹¹⁷ The other case, sixty-one years later, followed a similar narrative of the prosecutor and defendant swearing sexual assaults against each other, though again, the verdict focused on the theft rather than the sexual assault.¹¹⁸

¹¹³ *Morning Post*, 23 October 1849.

¹¹⁴ *OBP*, trial of Thomas Aston Cockayne, October 1849 (t18491029-1847).

¹¹⁵ *OBP*, trial of William Tarbuck, December 1849 (t18491217-223).

¹¹⁶ Paul Bleakley, ‘Accused of an “Abominable Crime”: Punishing Homosexual Blackmail Threats in London, 1723–1823’, *Crime, Law and Social Change*, 2021, 11.

¹¹⁷ *OBP*, trial of James Stride, Samuel Rudd, and William Miles, July 1777 (t17770702-4).

¹¹⁸ *OBP*, trial of John Aylett and Henry Johnson, December 1838 (t18381217-348).

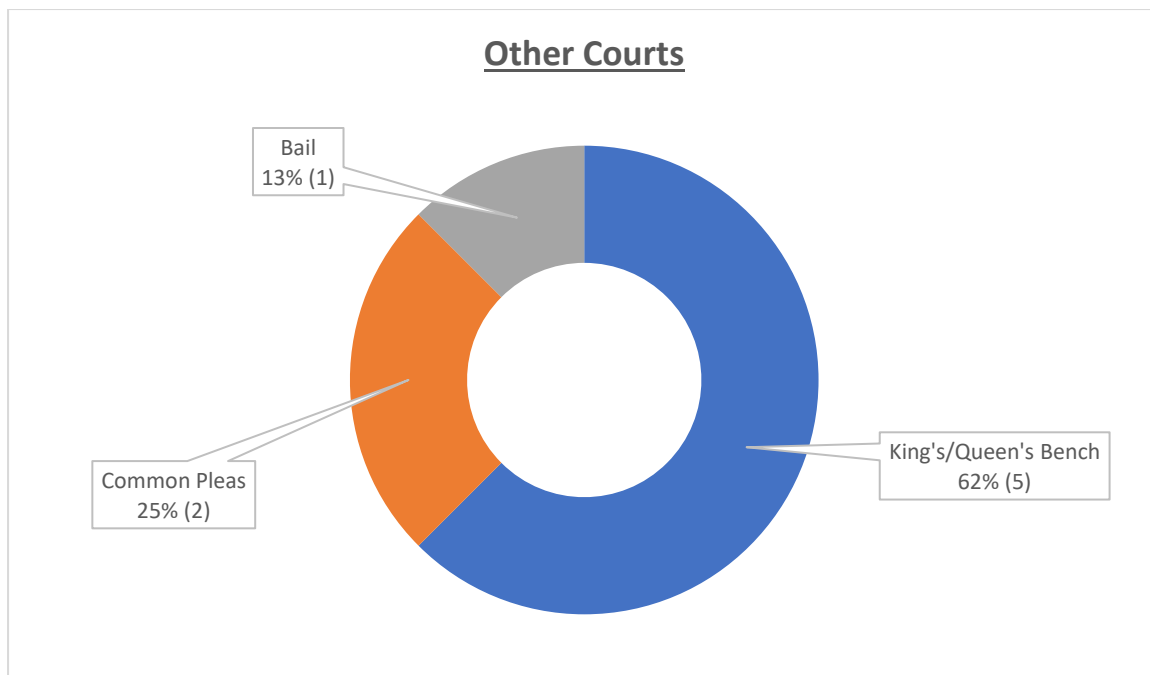


Figure 5 - Other courts containing evidence of male on male sexual violence. Source: *The Times, Morning Chronicle (1776-1860)*

Another important court which has been occasionally recovered in the newspaper evidence is the Court of King's (or Queen's) Bench, one of the supreme courts of criminal jurisdiction in Westminster Hall.¹¹⁹ It had the power to hear both civil and criminal actions. This court's role on the criminal (Crown side) was supervisory over inferior courts. It usually considered high misdemeanours but occasionally felonies too.¹²⁰ However, prosecuting at this court was a more expensive endeavour. This could be an advantage as defendants may not have been able to afford costs and thus were more amenable to informal settlements. Furthermore, these cases were more public than other sessions, which was especially risky in sexual matters. The court attracted attention because its cases were usually semi-political.¹²¹ Hence, this social unacceptability and higher costs were perilous but also potentially advantageous for those who could afford it.

Five prosecutions containing evidence of sexual assault between men were heard here. The only case from the eighteenth century was found in a long report in the *Morning Chronicle*,

¹¹⁹ Douglas Hay, 'Dread of the Crown Office: The English Magistracy and King's Bench, 1740–1800', in *Law, Crime and English Society, 1660–1830*, ed. Norma Landau (Cambridge: Cambridge University Press, 2002), 19.

¹²⁰ Bentley, *English Criminal Justice*, 58–59.

¹²¹ David Lemmings, 'Negotiating Justice in the New Public Sphere: Crime, the Courts and the Press in Early Eighteenth-Century Britain', in *Crime, Courtrooms and the Public Sphere in Britain, 1700–1850*, ed. David Lemmings (Farnham: Routledge, 2012), 121–22.

which described how theatre owner, Samuel Foote, ‘attempted to commit an unnatural crime’ on a servant. This is the longest report collected at more than 4000 words.¹²² The King’s Bench also heard the well-publicised prosecution of Charles Baring Wall, MP for Guilford, for sexually assaulting a policeman in 1833.¹²³ Although appearing relatively infrequently given the hundred year period of study in this thesis, the King’s Bench heard several high profile cases, often giving rich detail on sexual violence due to the length of reporting.

Unexpectedly, two other courts have been uncovered through newspaper reporting. For instance, two prosecutions were heard at the Court of Common Pleas. This was the other principal court at Westminster with the King’s Bench; both followed similar procedures and performed comparable work.¹²⁴ In theory, prosecutions which did not concern the monarch were heard here, and its traditional jurisdiction excluded felony.¹²⁵ Indeed, the offences uncovered were similar to prosecutions at other courts: attempted sodomy and indecent assault. The former was an assault committed by a butler on a retired salesman, and the latter a sexual assault on an unnamed policeman.¹²⁶ The singular case uncovered for the Bail Court was also an indecent assault on a policeman, this time by a Reverend. The Bail Court was also located in Westminster Hall.¹²⁷ It was a sitting at *Nisi Prius* – meaning it was tried before judges of the Queens’ Bench, and in this case a special jury.¹²⁸ According to another report, the indictment had been preferred at the Westminster Sessions but transferred by writ of *certiorari*.¹²⁹

As has been demonstrated, evidence of sexual violence between men can be found throughout the court system, ranging from the summary courts of London and the City, the Middlesex and Westminster Sessions, the Old Bailey, and more unique courts within Westminster Hall. Furthermore, there is a tension between prosecutions where a sexual

¹²² *Morning Chronicle*, 10 December 1776.

¹²³ *The Times*, 4 March, 10 and 13 May 1833; *Morning Post*, 25 April and 13 May 1833; *Morning Chronicle*, 13 May 1833.

¹²⁴ Ralph V. Turner, ‘The Origins of Common Pleas and King’s Bench’, *American Journal of Legal History* 21, no. 3 (1977): 238–54.

¹²⁵ John Baker, *An Introduction to English Legal History*, 5th ed. (Oxford: Oxford University Press, 2019), 44–45.

¹²⁶ *Morning Chronicle*, 23 June 1823; *Morning Post*, 30 May 1854

¹²⁷ Walter Thornbury, *Old and New London: Volume 3* (London: Cassell, Petter & Galpin, 1878), 560–76.

¹²⁸ *The Times*, 22 June 1842.

¹²⁹ *Morning Post*, 22 June 1842.

assault was the primary, secondary, or tertiary charge. The former predominated at magistrate courts, the Middlesex and Westminster Sessions, plus Westminster Hall courts, but when it was secondary or tertiary to another charge prosecutions were largely heard at the Old Bailey.

The experience of the courtroom

What was the experience of prosecutors and defendants inside these courtrooms? It has been noted that eighteenth century trials were conducted amid noise and disorder, with more orderly scenes becoming the norm towards the later century and beyond due to more lawyers involved.¹³⁰ This section will outline the trial process, who was able to speak at what points, and how the men involved were treated. What did a typical trial for sexual assault (or in which sexual assault was disclosed) look like?

Courts were the heart of the criminal justice system.¹³¹ They existed for the purposes of dispensing criminal justice, and the court system had both a physical and symbolic role in the application of the law. Justice was intended to be a theatrical experience where state power was on display.¹³² This was especially the case in the assizes, where the most serious crimes were tried. King explains that assizes should be seen as 'participatory theatre'.¹³³ Those involved, especially the accused, were intended to be overawed by the majesty and ceremony of the courts. They even had to stand for the whole of their trial, though they were typically much shorter than later.¹³⁴ Trials were held in open court, as such justice was public justice. The public were essential to the rituals and practices that took place in spaces of law, according to Milka.¹³⁵ Some historians have declared that courts were performative

¹³⁰ David Lemmings, 'Introduction: Criminal Courts, Lawyers and the Public Sphere', in *Crime, Courtrooms and the Public Sphere in Britain, 1700-1850*, ed. David Lemmings (Farnham: Routledge, 2012), 2; Taylor, *Crime, Policing and Punishment*, 116.

¹³¹ Taylor, *Crime, Policing and Punishment*, 106.

¹³² Taylor, 113.

¹³³ Peter King, *Crime, Justice and Discretion in England, 1740-1820* (Oxford: Oxford University Press, 2000), 255.

¹³⁴ Bentley, *English Criminal Justice*, 63.

¹³⁵ Amy Milka, 'Temples of Justice: The Courtroom Space in Eighteenth-Century England', *Law & History* 7, no. 2 (2020): 86.

spaces where identities were both declared and forged.¹³⁶ As such, it can be said the experience of the courtroom did not only reflect attitudes but could mould them too.

A trial began with the prosecutor sharing his complaint to the jury, or, if he had counsel, a statement could be made on his behalf. It was in these statements that victims of sexual assault spoke about such acts and outlined their evidence. However, if a prosecutor was represented by counsel, the latter typically made fewer statements on the details of a sexual act, usually focusing on the character and respectability of their clients. In this way, the presence of lawyers may have caused the 'truth' of a sexual assault to be hidden, making acts of sexual violence more difficult to recover.

Thereafter witnesses were called, for instance individuals who saw a sexual assault take place, or a constable testifying on the circumstances of a defendant's apprehension. During these testimonials a defendant or his council, as well as the jury, might ask questions to prosecutors and witnesses, though they usually waited until the prosecution case was finished. Cross examination by defendants without counsel 'were, for the most part, pitifully ineffective', according to Bentley.¹³⁷ It was common practice for judges to take prosecutors and witnesses through their testimonies in detail until they were satisfied the fullest case was presented.¹³⁸

Once the prosecution evidence had been outlined emphasis shifted onto the defendant, who was expected to make their defence. Unlike prosecutors, if a defendant had counsel they were not allowed to make opening (or closing) statements, nor address the jury.¹³⁹ It was in the statements of defendants that not only were allegations of sexual assault against them denied, but where accusations of sexual assault might be levelled against their prosecutor, as can be seen in prosecutions categorised as tertiary. Furthermore, a defendant or his counsel might call witnesses to refute the facts of the case. He might similarly bring witnesses to his character, for example, in attempts to persuade the jury he

¹³⁶ Shani D'Cruze, *Crimes of Outrage: Sex, Violence and Victorian Working Women* (London: UCL Press, 1998); Martin Wiener, 'Judges v. Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth-Century England', *Law and History Review* 17, no. 3 (1999): 469–70.

¹³⁷ Bentley, *English Criminal Justice*, 140.

¹³⁸ Beattie, *Crime and the Courts*, 342.

¹³⁹ John H. Langbein, *The Origins of the Adversary Criminal Trial* (Oxford: Oxford University Press, 2003), 3–5.

did not have a propensity for sodomy.¹⁴⁰ After the case for the defence was completed the judge turned to the jury for their verdict, or he might sum up the case first. The latter became more common as more lawyers became involved in the trial process.¹⁴¹

The introduction of lawyers and legal counsel meant a shift towards the 'adversary' trial throughout the eighteenth century and beyond, with the courtroom becoming an opportunity for defence counsel to test the prosecution.¹⁴² To that end, the credit of prosecutors and witnesses were frequently attacked by the defence.¹⁴³ Furthermore, previous associations or appearances in court were consistently brought up to attack a man's character, whether prosecutor or defendant. In sodomy trials, the focus for the defence counsel tended to be on the prosecutor's bad character or the defendant's previous good character.¹⁴⁴

The intervention of lawyers led to lay voices in the courtroom to be silenced as part of the ongoing professionalization of legal culture.¹⁴⁵ This led to a restriction of knowledge surrounding sodomy from the late eighteenth century, especially from accused sodomites, Cocks has argued.¹⁴⁶ It also had the effect of lengthening trials significantly. It has been shown that during the eighteenth and early nineteenth centuries most trials were over in a matter of minutes, and rarely continued as long as an hour.¹⁴⁷ Indeed, the demands of jury service led to a strong desire to reach a quick verdict.¹⁴⁸ However, as trials at Assizes and Quarter Sessions 'increasingly became contests between lawyers...trials became much longer and much more formal'.¹⁴⁹

¹⁴⁰ The importance of character is discussed in Chapter Four, 119-121.

¹⁴¹ Beattie, *Crime and the Courts*, 376.

¹⁴² See Langbein, *The Origins of the Adversary Criminal Trial*.

¹⁴³ Beattie, *Crime and the Courts*, 374.

¹⁴⁴ Harry Cocks, 'Trials of Character: The Use of Character Evidence in Victorian Sodomy Trials', in *Domestic and International Trials, 1700-2000: The Trial in History*, ed. R. Melikan (Manchester: Manchester University Press, 2003), 36-53.

¹⁴⁵ See David Lemmings, 'Criminal Trial Procedure in Eighteenth-Century England: The Impact of Lawyers', *The Journal of Legal History* 26, no. 1 (2005): 73-82.

¹⁴⁶ Harry Cocks, 'Making the Sodomite Speak: Voices of the Accused in English Sodomy Trials, C1800-1898', *Gender & History* 18, no. 1 (2006): 87-107.

¹⁴⁷ Emsley, *Crime and Society*, 201.

¹⁴⁸ Taylor, *Crime, Policing and Punishment*, 117.

¹⁴⁹ Emsley, *Crime and Society*, 200.

How do these cases compare to other prosecutions in the period?

This final section will explore prosecutions containing evidence of sexual violence between men in terms of the fluctuating incidence of surviving evidence across the period. Thirty-five documents, mostly examinations, were found which were prosecuted at the Middlesex Sessions, with an additional two for the Westminster Sessions – mostly sexual assaults as the primary driver of prosecutions. Furthermore, one prosecution for the Old Bailey Gaol Delivery Sessions was also taken here and combined with the cases taken from the *Proceedings* gives sixty-seven cases for the Old Bailey, largely sexual assaults alleged in a defence – tertiary cases. More prosecutions come from newspaper reporting, at 140 cases; again, most of these were from the primary category. Proportionally, these reports form 57% of the total, with the *Proceedings* at 27%, and remaining 16% in the Middlesex and Westminster Sessions Papers.

As can be seen below, newspaper reporting covers all decades aside from the 1760s, while the Old Bailey appears in all except the final year of study. In contrast, the Middlesex and Westminster Sessions are clustered in the mid to late period. This is partially explained by the lack of survival from these Sessions unless involving potential felonies.¹⁵⁰ Nevertheless, there is a good spread of cases throughout the period which means a meaningful analysis of factors affecting rates of prosecution can be made. However, it must be remembered that while fluctuations may indicate real change, they might well reflect increases in reporting due to press interest, court processes, and more availability of data. As Cook rightfully points out, whilst ‘suppositions can be made about fluctuations, the figures remain unpredictable’.¹⁵¹ As will be seen, prosecutions which contained evidence of sexual violence between men appeared to rise and fall in line with other crimes.

¹⁵⁰ Shoemaker, ‘Using Quarter Sessions Records’, 146.

¹⁵¹ Matt Cook, *London and the Culture of Homosexuality, 1885-1914* (Cambridge: Cambridge University Press, 2003), 48.

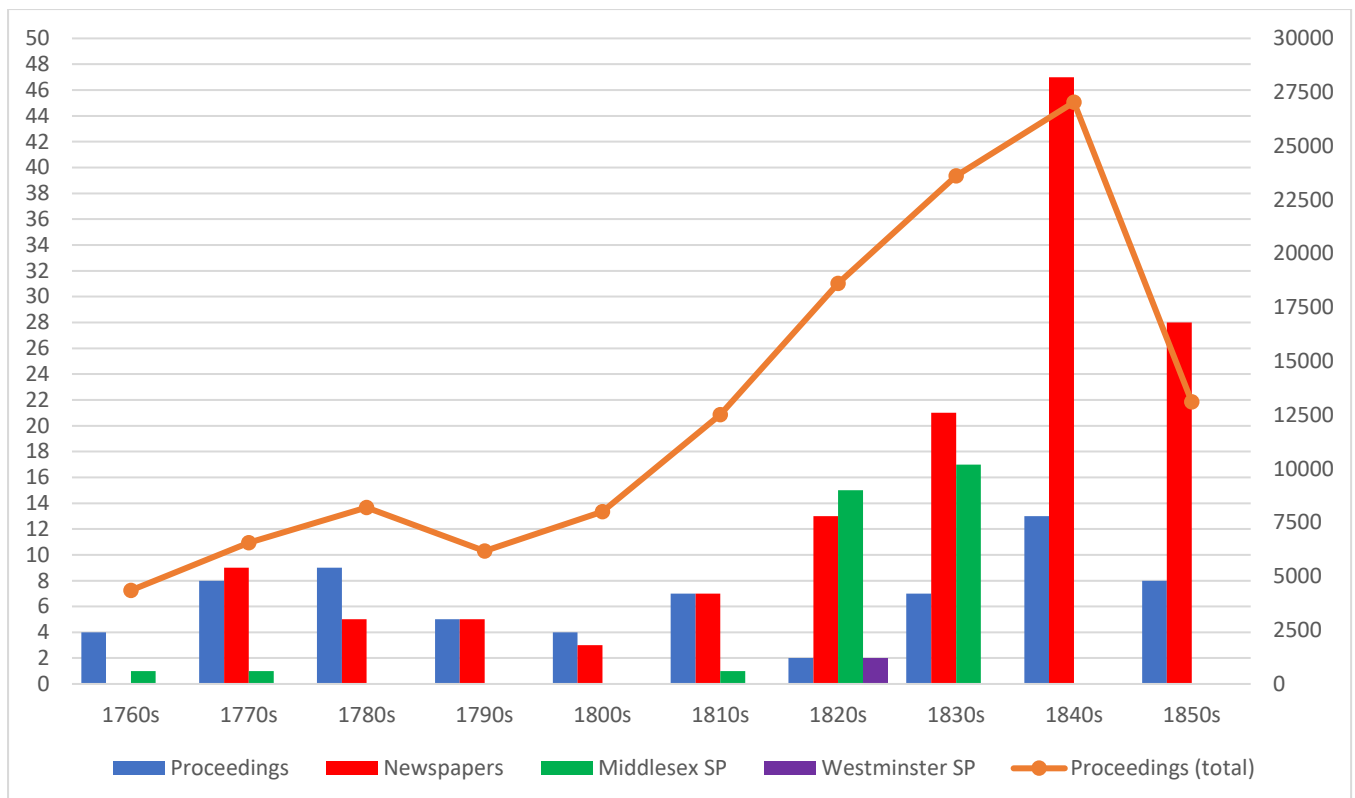


Figure 6 - Total separate cases of male to male sexual violence in court records and newspaper reporting. Source: OBO (1761-1856); LMA, MJ/SP (1768-1836), OB/SP (1786), WJ/SP (1827); *The Times*, *Morning Post*, *Morning Chronicle*, *Lloyd's Weekly Newspaper*, *Reynolds's Weekly Newspaper* (1772-1860)

Figure 6 above depicts the total number of prosecutions containing male on male sexual violence uncovered in each source on the left axis, with the total number of cases contained within the *Proceedings* via the orange line and numbers on the right axis, used as a basic indication of fluctuations in prosecutions. As can be seen, there are slight increases within the cases uncovered in the beginning of the period, with decreases surrounding the turn of the nineteenth century before sharp rises to the 1840s, and large decreases thereafter. Especially evident is the rise of newspaper coverage of criminal trials, indicating that reports became a space where instances of sexual violence between men were narrated as court reporting became more reticent.

While the opening decade contained a relatively low number of just five cases – two primary, one secondary, and two tertiary prosecutions – the following two decades experienced a growth in prosecutions in the cases uncovered and at the Old Bailey in general. Furthermore, two newspapers – the *Morning Chronicle* and *Morning Post* had been created and began reporting on cases of sexual violence between men. At the end of the

eighteenth-century court reporting was 'prime journalistic fodder'.¹⁵² Indeed, newspaper reports equalled the Old Bailey and Middlesex Sessions' combined total for the 1770s in the cases found, and all but one report was of a sexual assault as the primary driver of a prosecution. Hence, increases were largely down to prosecutions with sexual assault as the core of many cases. Furthermore, these rises in prosecutions were concurrent with strong population growth in the capital.¹⁵³

Another reason for rising prosecutions is the prevalence of theft offences found, especially robberies. Indeed, in the 1770s and 1780s, more than a third of defendants were charged with a theft offence. At the Old Bailey, two prosecutions appeared with a sexual assault as the primary and another two as the secondary driver of a case, but thirteen in the tertiary category. At this time more items could be stolen with greater ease, and there were growing concerns with property rights.¹⁵⁴ Furthermore, high food prices may have contributed to increases in prosecutions for theft.¹⁵⁵ Many of these were robberies with violence. This, combined with the appearance of assaults reported in newspapers, may also have reflected a rising societal intolerance of interpersonal violence in general, which may have affected the prosecutions collected in this sample.¹⁵⁶

However, prosecutions began to fall sharply leading into the nineteenth century throughout all types of prosecution. One probable cause of this is the effect of war, which is known to lower indictments.¹⁵⁷ Furthermore, the amount of space devoted to crime news could be curtailed due to foreign events and War.¹⁵⁸ The 1790s through to the mid-1810s saw near constant conflict between Britain and France. Interestingly, several other European countries experienced a lack of prosecutions for sodomy during the Revolutionary and Napoleonic periods, though the Old Bailey saw a rise, though this is not reflected in the

¹⁵² Katie Barclay, 'Stereotypes as Political Resistance: The Irish Police Court Columns, c.1820–1845', *Social History* 42, no. 2 (2017): 257–80.

¹⁵³ Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'London History - A Population History of London', *OBP*, <https://www.oldbaileyonline.org/static/Population-history-of-london.jsp>, accessed 15 October 2019.

¹⁵⁴ Taylor, *Crime, Policing and Punishment*, 20.

¹⁵⁵ John M. Beattie, 'The Pattern of Crime in England 1660-1800', *Past & Present*, no. 62 (1974): 85–95.

¹⁵⁶ See John Carter Wood, *Violence and Crime in Nineteenth-Century England, The Shadow of Our Refinement* (London: Routledge, 2004).

¹⁵⁷ Beattie, 'The Pattern of Crime', 94; Douglas Hay, 'War, Dearth, and Theft in the Eighteenth Century: The Record of the English Courts', *Past & Present* 95, no. 1 (1982): 117–60.

¹⁵⁸ King, *Crime, Justice and Discretion*, 164–66.

cases which contained sexual violence between men due to a lack of detail.¹⁵⁹ Prosecutions for other offences such as theft with violence declined, as did the total number of crimes reported in the *Proceedings*. This may have reflected an actual decline in crime, but it is more likely that it can be explained by the practice of forceable enlistment in times of war, potentially before prosecutions made their way through the criminal justice system.¹⁶⁰ In addition, men may have joined the army due to high taxes and unemployment, pushing prosecutions down. At the same time, perhaps concern about the death penalty may have affected prosecutions, especially for capital property crimes.¹⁶¹ However, more prosecutions were taken from the 1810s, both in the primary and tertiary categories, which was the starting point for a consistently high number of indictments for the next few decades. The conclusion of warfare often resulted in an increase of indictments, and this appears to be the case following the end of the Napoleonic Wars.¹⁶²

Increases in the 1820s are principally due to the collection of examinations at the Middlesex and Westminster Sessions and newspaper articles concerning sexual assaults between men; as such, these surges are largely for sexual assaults as the primary core of prosecutions. This decade saw several legal changes which may have led to an increase in prosecutions. Attempted sodomy was legally classified as an 'infamous crime' in 1825, with a subsequent act two years later designating 'infamous crimes' as sexual acts between men.¹⁶³ In the Middlesex cases found to contain sexual assaults, two took place in the same year as this latter act, and one two years later. As has been seen, reporting of charges in newspapers is varied, however one case from 1823 states attempted sodomy relatively explicitly. Perhaps most important was provision of expenses for witnesses and prosecutors.¹⁶⁴ Considering that sexual assaults were prosecuted under a variety of charges, this legislation is likely to have played a part in the rise of prosecutions collected here.

¹⁵⁹ Elwin Hofman, 'The End of Sodomy: Law, Prosecution Patterns, and the Evanescent Will to Knowledge in Belgium, France, and the Netherlands, 1770–1830', *Journal of Social History*, 2020, 1–23; Cocks, *Nameless Offences*, 22.

¹⁶⁰ Hay, 'War, Dearth, and Theft', 141–42.

¹⁶¹ Beattie, 'The Pattern of Crime', 58.

¹⁶² Beattie, 94–95; Hay, 'War, Dearth, and Theft'.

¹⁶³ See Chapter Two, 37–58.

¹⁶⁴ See above, 82–83.

Furthermore, the early nineteenth century saw the gradual expansion of police jurisdiction. Indeed, attention had been on policing reform due to the rise of prosecutions from the late eighteenth century.¹⁶⁵ Policing agencies were involved in the protection of public order, especially in the 1820s, and the new Metropolitan Police continued these practices, increasing the number of committals.¹⁶⁶ The following decade contained one of the largest number of cases for any decade collected, primarily due to the Middlesex Sessions and newspaper reporting, again, mostly sexual assaults as the primary driver of prosecutions. Here we also see an increase in police constables as victims of sexual assault, showing their increased involvement in identifying and prosecuting sexual assaults between men.¹⁶⁷ Indeed, policemen often claimed to have been propositioned.¹⁶⁸ Although the police were increasingly involved, they tended not to go out of their way to detect unnatural crimes, however.¹⁶⁹ One also cannot discount the effect of alcohol in increasing prosecutions, as drink related incidents tended to rise during relatively affluent times.¹⁷⁰ Indeed, as will be seen in Chapter Four, alcohol was a persistent theme used by suspected perpetrators and the courts to negate responsibility, to a certain point, for a sexual act.¹⁷¹ Moreover, although not as dramatic, use of sexual assault as a defence in tertiary cases also increased in this decade.

Prosecutions in newspaper reporting and the *Proceedings* rose hugely in the 1840s, for prosecutions of sexual assaults between men but also broadly for all offences. It was a period of severe economic hardship.¹⁷² In newspaper reporting, indecent assaults, with a sexual assault as the primary driver of a prosecution, were the vast majority. Economic difficulty may have contributed to a rise in prosecutions for theft offences, which comprised all but one of the cases at the Old Bailey – largely tertiary prosecutions. Furthermore, the gradual reduction of capital offences may have encouraged a greater willingness to

¹⁶⁵ Harris, *Policing the City*, 38.

¹⁶⁶ Cocks, *Nameless Offences*, 53.

¹⁶⁷ See Chapter Five, 143-146.

¹⁶⁸ Upchurch, *Before Wilde*, 112.

¹⁶⁹ Cocks, *Nameless Offences*, 53.

¹⁷⁰ Taylor, *Crime, Policing and Punishment*, 21.

¹⁷¹ See Chapter Four, 123-125.

¹⁷² Taylor, *Crime, Policing and Punishment*, 26.

prosecute.¹⁷³ At the same time, the police became more involved in the investigation and prosecution of crimes during the 1840s, and especially throughout the 1850s.

During this final decade, prosecutions began to reduce at the Old Bailey and in newspaper reporting across all types of prosecutions. It may be that the continued expansion of summary justice, especially concerning offences against property without violence, affected prosecutions.¹⁷⁴ In newspaper reporting, prosecutions continued to appear until two final cases in 1860 – both sexual assaults as the primary driver of a prosecution. Moreover, this was the beginning of a steady decline in recorded crime which continued through to the twentieth century.¹⁷⁵

It is difficult – if not impossible – to know whether this dataset reflects actual fluctuations of prosecutions in the late eighteenth and nineteenth century, rather than increased reporting and press interest in such acts, along with developments in court processes. However, it appears to indicate four important changes. First, a broad increase in prosecutions in the early part of the nineteenth century, with several factors being noted as contributing to these shifts: end of war, the police, and removal of the death penalty for many crimes. Second, prosecutions containing sexual assaults between men, especially cases with a sexual assault as the primary and tertiary driver of prosecutions, moved with these broader currents together, which makes sense as they were largely hidden inside them in the various offence categories explored previously. Third, at the Middlesex Sessions, victims appear to have been more willing to prosecute when their expenses were paid. Furthermore, perhaps the increase of policing practices and the creation of the Metropolitan Police also helped bring prosecutions forward. At the same time, the growing intolerance of interpersonal violence may also have pushed victims to prosecute more than they had done previously. Lastly, as can be seen most evidently in the figure that opened this section, the press became a place where sexual assaults could be narrated. Above all, prosecutions for sexual violence, especially those in the primary and tertiary categories, largely rose and fell in line with other crimes, which indicates the ordinariness of their appearance.

¹⁷³ Taylor, 21.

¹⁷⁴ Taylor, 18; 107–9.

¹⁷⁵ Taylor, 22.

Conclusion

This chapter has provided the legal framework for cases containing sexual violence between men in the late eighteenth and nineteenth centuries, with the period holding several significant developments. Firstly, the role of the police is integral due to their amplified presence on the streets and appearance as victims of sexual assaults, along with the rise of public prosecution. Secondly, the court system itself saw fluctuations in the number of prosecutions, and the introduction of lawyers had significant implications on the details of sexual violence being stated in the courtroom. Prosecutions containing sexual violence between men appeared across the period in several courtrooms, showing that evidence can be recovered from multiple stages throughout the court system. Thirdly, it has been demonstrated that prosecutions containing evidence of sexual violence between men fluctuated with other crimes. The next chapter will consider what this evidence can tell us about the discourse and representation of male on male sexual assault within the sources consulted, especially in the terminology used and narratives of alleged victims and perpetrators.

Chapter Four: The Representation of Sexual Assault

The previous chapters have outlined the method used to uncover evidence of male on male sexual violence, under what offences it has been found, and at what courts these charges were prosecuted. Attention will now turn its representation within these sources, in the language which signified this violence, and how the vocabulary fitted within the narratives of victims and perpetrators. The narratives presented in the evidence, 244 prosecutions, have also been analysed to understand how alleged victims and perpetrators of sexual assault constructed their complaints and arguments.

The first half of this chapter analyses the different individual words and phrases utilised to denote sexual violence between men, and how this changed across the late eighteenth and nineteenth centuries. While sodomy was often called “the unspeakable crime”, public discourses were persistent in naming it.¹ Indeed, language referring to male on male sexual violence was wide-ranging, but varied depending on the source in question. Witness statements were not for public usage, making explicit uncensored terminology commonplace. On the other hand, the *Proceedings* and newspapers (where public sensibilities were more of a potential issue) used multiple strategies to relate sexual assaults in a veiled or coded way, often hiding certain words or phrases and even entire narratives. The main questions of this section are: what terminology was frequently employed to describe sexual violence, and how did this shift across the period of study? How did it differ from language used to describe consensual sexual relations between men, if at all? To determine this, vocabulary describing both consensual and non-consensual sex was compared in newspaper reports and the *Proceedings*.

The second half of the chapter examines the narratives of victims and perpetrators in greater detail. Unfortunately, they were not always present. For example, while examinations in the Middlesex and Westminster Sessions Papers contained a wealth of detail on the context of sexual assaults, they were, by their nature, the narratives of prosecutors rather than defendants. Fortunately, roughly forty percent collected contained

¹ Harry Cocks, *Nameless Offences: Homosexual Desire in the Nineteenth Century* (London: I. B. Tauris, 2003), 77.

a short statement by the accused at the end. Across all types of prosecution, including whether a sexual assault was the primary, secondary, or tertiary driver of a prosecution, a victim narrative was present in roughly 70% of cases, with those of the perpetrator slightly fewer at 67%, and more than a fifth contained neither.² This section will ask how acts of sexual violence were constructed as stories or events by the parties involved. How did victims construct narratives of sexual assault, and how did they emphasise that a sexual act was not consensual? Thereafter, accounts of the perpetrators are explored. How did they defend themselves from accusations of sexual assault? For the narratives of both victims and perpetrators, were there differences depending on the importance of a sexual assault in a prosecution? These narratives contained frequently recurring motifs or tropes which allow us to perceive how male to male sexual violence was conceptualised by those involved. Furthermore, these records allow us to see how men presented their narratives in court.

Terminology

Peakman notes that when we look at terminology to refer to acts deemed perverse in the past ‘we step into a quagmire of phrases’.³ Indeed, language which referred to sexual violence between men was manifold in the late eighteenth and nineteenth centuries. However, much of this did not refer specifically to male on male sexual violence, but to sexual acts between men more generally. In this way, it was often inseparable in terms of consent. That said, the evidence contains a multitude of terminology used by victims, witnesses, perpetrators, and reporters, to refer to acts of sexual assault between men. While some were explicit – especially in the late eighteenth century – most were vague. Harry Cocks explains that ‘various euphemisms...were routinely used to describe same-sex desire’.⁴ However, while researchers have found much language referring to sexual assaults on women and children, adult men have not been a focus.⁵ The following sections will thus examine particularities of language specifically in reference to male on male sexual violence,

² Those without a narrative tended to be newspaper reports of committal or short trials. For example, see *Morning Post*, 5 February 1778; *Morning Chronicle*, 25 October 1809; *The Times*, 23 July 1850.

³ Julie Peakman, *The Pleasure’s All Mine: A History of Perverse Sex* (London: Reaktion Books, 2013), 8.

⁴ Cocks, *Nameless Offences*, 85.

⁵ See Daniel J. R. Grey, “‘Monstrous and Indefensible’? Newspaper Accounts of Sexual Assaults on Children in Nineteenth-Century England and Wales”, in *Women’s Criminality in Europe, 1600–1914*, ed. Manon van der Heijden, Marion Pluskota, and Sanne Muurling (Cambridge: Cambridge University Press, 2020), 189–205 for a recent example.

demonstrating how most, though not all, also referred to consensual acts. Comparisons are made between trial reports of consensual and non-consensual acts in the *Proceedings* and newspaper reporting. Furthermore, while each of the sources discussed here contained their own unique terminology, there are many crossovers between them. These are examined first, before attention turning to each specific source.

Commonalities

As it denoted anal penetration, sodomy was intrinsically related to sexual relations between men. However, it was variously referred to depending on the source in question. It was certainly favoured in the late eighteenth century *Proceedings*, mainly due to several cases under the offence of sodomy being collected. Furthermore, similar terms such as ‘sodomitical’ appeared in one of the earliest reports uncovered, while ‘sodomite’ – used to describe a person who had committed a homosexual act as opposed to an identifiable identity group – was used in five cases, lastly in 1792.⁶ This term ‘was certainly one to be feared’, notes Weeks.⁷ Sodomy itself has not been uncovered post-1810, after allegedly being used by a victim of sexual assault to make an accusation against a gentleman.⁸ Moreover, the synonymous ‘buggery’ and its derivatives were also not in use in the nineteenth century within the cases uncovered. Here, newspaper reporting matched the *Proceedings* in the lack of these terms, as reports collected contained only two overt references to sodomy, both in the late eighteenth century.⁹ On the other hand, witness statements at the Middlesex and Westminster Sessions show that the language of sodomy continued to be in cultural usage through the nineteenth century. Indeed, they featured in seven depositions in the late 1820s, though this fell to just two in the early 1830s. More than half used the identifier of ‘sod’ or ‘sodomite’ to refer to men committing sexual assaults.¹⁰ Hence, although the terminology of sodomy declined in usage in the *Proceedings*

⁶ *Old Bailey Proceedings* (hereafter *OBP*), trial of James Brown, otherwise James Smith, September 1763 (t17630914-52); trial of William Thompson, May 1792 (t17920523-49). See Harry Cocks, ‘Safeguarding Civility: Sodomy, Class and Moral Reform in Early Nineteenth-Century England’, *Past & Present* 190, no. 1 (2006): 124 on the question of identity.

⁷ Jeffrey Weeks, *Sex, Politics and Society the Regulations of Sexuality since 1800* (Harlow: Pearson, 2012), 123.

⁸ *OBP*, trial of William Cane, July 1810 (t18100718-66).

⁹ *Morning Post*, 3 December 1776; *The Times*, 31 October 1787.

¹⁰ See *London Metropolitan Archives* (hereafter *LMA*), information of George Luker et al, 11 April 1831 (MJ/SP/1831/05/027).

and newspaper reporting of sexual assaults between men, it survived in popular custom – though potentially declining – as evidenced by witness statements. This decline matches partially with other European countries where the legal language of sodomy lost its meaning and new terms such as ‘pederasty’ became more commonly used, and ‘homosexual sex’ could be referred to in a way devoid of religious and apocalyptic connotations’.¹¹

One of the most common ways to refer to sexual acts between men was in terms of the ‘unnatural’, though its prevalence in the cases collected depended on the source. The idea that such acts were unnatural goes back to Antiquity, and ‘by the Middle Ages had been formalized in the European world through Christian doctrine and canon law’.¹² While it was one of the primary terms to refer to homosexual crimes in the period studied, it ‘often covered a multitude of meanings, from bestiality to birth control’.¹³ It was present in one of the earliest cases of sexual assault uncovered in the *Proceedings*, being mentioned five times.¹⁴ In these trial reports, its usage was stable throughout the entire period of study, not appearing in only one decade (the 1820s), where the overall amount of cases found was low. Stability of the unnatural was also true for newspaper reporting, though to a varied degree. It was favoured in the late eighteenth century, especially ‘unnatural crime’ or ‘unnatural offence’. The former was ‘one of the few terms to provide unambiguously better results’ for a study of homosexuality in the nineteenth century, said Upchurch.¹⁵ The first two decades of the nineteenth century saw no reports at all, though other decades included phrases such as ‘unnatural attempt’ and ‘unnatural practices’.¹⁶

Witness statements in the Middlesex and Westminster Sessions Papers contained no references to the unnatural in the late eighteenth century, and only once in the 1810s, which increases to five times for the late 1820s, and back down to one for the 1830s.¹⁷ Its

¹¹ Elwin Hofman, ‘The End of Sodomy: Law, Prosecution Patterns, and the Evanescent Will to Knowledge in Belgium, France, and the Netherlands, 1770–1830’, *Journal of Social History*, 2020, 11–12.

¹² Sean Brady and Mark Seymour, ‘From Sodomy Laws to Same-Sex Marriage: Historical Transformations’, in *From Sodomy Laws to Same-Sex Marriage: International Perspectives since 1789* (London: Bloomsbury Academic, 2019), 1.

¹³ Weeks, *Sex, Politics and Society*, 124.

¹⁴ *OBP*, trial of William Bailey, October 1761 (t17611021-35).

¹⁵ Charles Upchurch, ‘Full-Text Databases and Historical Research: Cautionary Results from a Ten-Year Study’, *Journal Of Social History* 46, no. 1 (2012): 96.

¹⁶ *Morning Chronicle*, 8 January 1834; *Morning Post*, 31 December 1853.

¹⁷ Such as *LMA*, information of James Franklin Arnold, 9 August 1833 (MJ/SP/1833/09/008).

usage was certainly varied depending on where to look, being much more common in the *Proceedings* due to its presence in the narratives of prosecutors and defendants, which the newspapers did not always report. Usage of this term appeared to imply a sort of rareness, which, as the period of study progressed, was increasingly lost.

Perhaps the most dramatic change in terminology over the period of study was the rise of 'indecent' as a signifier of sexual relations between men, both in language and as an offence, which can be found in all sources. It was a vague term which referred to the 'uncivilized and unrespectable – and that covered quite a wide potential remit of everyday conduct'.¹⁸ Indecency was certainly used to describe acts of sexual assault in the late eighteenth century.¹⁹ However, the number of depositions and reports describing sexual assaults as indecent increased hugely in the nineteenth century, with numerous words combined to make new phrases to refer to assaults. This resulted in the phrase 'indecent assault' providing 'more detailed and more useful information' than other search terms, according to Upchurch.²⁰ One of the most popular derivatives was 'indecent liberties', which appeared only after the first few decades of the nineteenth century and was often used by victims to state that an assault had occurred.²¹ Similarly, 'indecent manner' was common around this time, though not in the *Proceedings*.²² Stevenson notes that this phrase 'is likely to be a euphemism for a sexual assault', as appears to be the case here.²³ This phrase was one of the few that was used much more frequently in cases containing male on male sexual violence.

Another term not in the *Proceedings* was 'indecent conduct', used in both witness statements and newspaper reports, though to a lesser extent.²⁴ Although the language of

¹⁸ David J. Cox, Candida Harris, Judith Rowbotham and Kim Stevenson, *Public Indecency in England 1857-1960: 'A Serious and Growing Evil'* (London: Routledge, 2015), 2.

¹⁹ Chapter Two, 46-57. For a sample of cases containing indecency in narratives, see LMA, information of Richard Coalman, 7 December 1768 (MJ/SP/1768/12/010); OBP, trial of John Clarke et al, July 1774 (t17740706-60); *Morning Chronicle*, 10 December 1776.

²⁰ Upchurch, 'Full-Text Databases', 95.

²¹ OBP, trial of Jeremiah Healy et al, April 1811 (t18110403-95); LMA, information of James Franklin Arnold, 9 August 1833 (MJ/SP/1833/09/008); *Morning Post*, 2 September 1844. It was also used to signal sexual assaults against women.

²² LMA, information of William Wheatley and William Smith, 17 April 1827 (WJ/SP/1827/07/00); *The Times*, 8 May 1848.

²³ Kim Stevenson, 'Outrageous Violations: Enabling Students to Interpret Nineteenth Century Newspaper Reports of Sexual Assault and Rape', *Law, Crime and History* 4, no. 1 (2014): 56.

²⁴ LMA, information of Thomas Tipper et al, 3 May 1833 (MJ/SP/1833/05/016); *The Times*, 23 July 1850.

indecenty can be found throughout all the sources of study, it was heavily prevalent in newspaper coverage. The *Morning Chronicle* additionally reported such phrases as ‘indecent behaviour’ and ‘indecent intercourse’, with *The Times* on occasion using ‘indecent offence’, ‘indecent attempt’, ‘indecent observations’ and ‘indecent gestures’, all mostly towards the end of the period of study.²⁵ Unlike the unnatural, the indecent covered a wider variety of acts that could refer to men and women, both consensual and non-consensual, but in the nineteenth century became the favoured way of talking about sexual assaults between men, especially in newspaper coverage.

It was not the only way, however. Another popular term was ‘infamous’, though it was not uncovered in any depositions. As with indecenty, it was not often used in the late eighteenth century, with only one mention of ‘infamous crime’ in a newspaper.²⁶ This increased in the nineteenth century but not until the 1830s. This may be due to the implementation of a bill defining extortion via accusing someone of a homosexual offence as an infamous crime in 1827.²⁷ In the *Proceedings*, appearances doubled from the 1830s from only one report, to three, to six by the 1850s.²⁸ In the newspapers, the 1840s contained more than quadruple reports containing ‘infamous’ than any other decade. They also included phrases such as ‘infamous practices’, ‘infamous proposition’ and ‘infamous offence’, which did not appear in the *Proceedings*.²⁹

Other terms were variously used by multiple sources but not others. For example, ‘unmanly’ has been found in the *Proceedings* and newspapers but not in examinations; in 1823 a victim of sexual assault stated that he would strike ‘any man who behaved indecently or unmanly to him’.³⁰ A few years later, two papers also included reports of an ‘unmanly assault’ and ‘unmanly behaviour’, in reference to sexual assaults between men.³¹ However, newspapers did not contain any explicit terminology relating to ejaculation. It was also rare

²⁵ *Morning Chronicle*, 10 December 1776; 19 June 1844; *The Times*, 30 October 1838; 4 January 1842; 8 February 1853; 16 November 1853.

²⁶ *The Times*, 6 April 1785.

²⁷ See Chapter Two, 55.

²⁸ *OBP*, trial of William Shutter, February 1830 (t18300218-112); trial of John Joyce, August 1844 (t18440819-1946); trial of Frederick Thomas Richards, May 1855 (t18550507-560).

²⁹ *The Times*, 30 July 1829; 15 December 1841; *Morning Post*, 27 November 1833.

³⁰ *OBP*, trial of John Eagan, September 1823 (t18230910-78).

³¹ *The Times*, 22 October 1824; *Morning Chronicle*, 14 September 1825.

in other sources, being stated only once in the *Proceedings* as 'emition' [sic] and once in depositions as 'nastiness'.³²

As can be seen, while there was common terminology used by multiple or all sources to describe male on male sexual violence, their appearance varied heavily, and fluctuated over time. While references to sodomy declined in the *Proceedings* and newspapers, they survived in the witness statements, implying a kind of exceptionality. Instead, indecency gained currency, which gave a wider reference point for acts contrary to new modes of respectability, including sexual violence between men. Indeed, this period saw increased importance of one's character and morality, and the cases here sit within these shifts.³³ Importantly, much of the language used across these sources to report on male on male sexual violence was part of the general way of describing sexual relations between men. The unnatural, infamous, and indecent 'appear to have been a part of the currency of everyday language, and to have been used to define homosexual acts'.³⁴ In this way, such terms did not explicitly refer to sexual assault on their own.

However, each source contained their own favoured terms and practices for discussing these acts. Given the varied terminology used in each different source type, these are analysed separately below.

Witness statements

Thirty-seven depositions from the Middlesex and Westminster Sessions Papers have been identified which contained male on male sexual violence. Most of these contained a sexual assault as the primary driver of a prosecution. The physical form and structure of these witness statements changed relatively little over the late eighteenth and nineteenth centuries. Each contained a short statement stating the name of the victim, the sessions, date, presiding Justice of the Peace, along with the name of the accused and their offence before the narrative of the complainant. Over time, some standard words became typeset, allowing simple filling in rather re-writing the whole opening statement each time. However,

³² *OBP*, trial of Thomas Andrews, May 1761 (t17610506-23); *LMA*, information of Richard Harris et al, 17 February 1786 (OB/SP/1786/02/019).

³³ Woodruff Smith, *Consumption and the Making of Respectability, 1600-1800* (Oxon: Routledge, 2002), 189–221.

³⁴ Cocks, *Nameless Offences*, 85.

the narrative of the victim was always handwritten, seemingly by the justice themselves. As such, these documents are often narratives relayed to a justice rather than the hand of the victim, and several documents contain marks of the victim at the end. Furthermore, although examinations may appear to contain cohesive narratives, they were 'almost certainly mediated by both the input of an investigator or a prosecutor asking questions'.³⁵ Indeed, sentences appear to have been added in response to questioning on several occasions. 'He took hold of my private parts twice before I got up' was written at the end of Robert Graham's deposition after describing being assaulted and leaving the room, for example.³⁶ Similarly, the narrative of Thomas Cassidy is supplemented by such statements as 'his flap was down', and when a man touched his privates, 'he pressed his hand hard against me'.³⁷ Four years later, Joseph Frederick Symons adds that before a man kissed him, the man put 'his hand in my flap'.³⁸ In these instances, extra information appears to have been added to indicate intention of sexual touching, rather than it being accidental.

A lack of consent can also be seen in the language used by victims and witnesses to describe assaults, including numerous phrases not appearing in other sources. However, as most witness statements were collected for the late 1820s and 1830s, it is difficult to note change over time with certainty. For example, 'improper liberties' appeared in two cases and was used by officers to describe assaults relayed to them by victims of sexual assault before arrests were made.³⁹ Likewise, 'improper manner' was favoured in another.⁴⁰ Evidently, these are variations on 'indecent liberties', already noted to be used across all sources, and more often refer specifically to sexual assault.

Where depositions differed from other sources is in their explicitness, especially when referencing body parts, and this continued to be the case throughout the period of study. 'Cock' was used three times by one victim, for example, in one of the earliest statements uncovered.⁴¹ Another man, fifty years later, described how he was sexually assaulted on his

³⁵ S. M. Robertson, 'What's Law Got to Do with It? Legal Records and Sexual Histories', *Journal of the History of Sexuality* 14, no. 1 (2005): 177.

³⁶ LMA, information of Robert Graham and Thomas Henderson, 17 September 1827 (MJ/SP/1827/09/146).

³⁷ LMA, information of Thomas Cassidy, 12 August 1831 (MJ/SP/1831/09/031).

³⁸ LMA, information of Joseph Frederick Symons et al, 12 July 1831 (MJ/SP/1831/09/020).

³⁹ LMA, information of James Webster et al, 7 August 1827 (MJ/SP/1827/09/112); information of Edward Driver et al, 26 August 1833 (MJ/SP/1833/09/062).

⁴⁰ LMA, information of Cornelius Grove et al, 22 January 1828 (MJ/SP/1828/02/052).

⁴¹ LMA, information of Richard Harris et al, 17 February 1786 (OB/SP/1786/02/019).

‘testacles’, a part of the body which rarely appeared in other sources.⁴² Several other body parts can be found throughout the *Proceedings* and newspapers, but were used proportionally more in depositions. In the examinations, ‘fundament’ was used twice by victims for example, with references also made to the ‘backdoor’, ‘backside’, and ‘bosom’, in both the late eighteenth and early nineteenth centuries.⁴³ However, while explicit terminology was used by victims, much more frequent were the less explicit ‘privates’ or ‘private parts’, which appeared in nearly all of the witness statements collected. While it is not unique to this source, proportionally its use was much higher than the *Proceedings* or newspaper reports. Again, this may refer to shifts of respectability, with men preferring to use less explicit language to refer to sexual acts between men. More unique however was the word ‘fuck’, which only appeared in two depositions and not in the other sources.⁴⁴

Since most of these depositions were created in a relatively short period of time – 1826 to 1836 – it is difficult to be confident on change over time. They appear on occasion to reflect questioning by justices, as seen by additions in the margins, though this was only present in a minority of cases. While language tended to be more explicit than other sources, more prevalent were terms which meant that specific body parts did not need to be named, and assaults could be described in more respectable terms. Furthermore, documents contained variations on frequent terminology, such as describing assaults as ‘improper’. Aside from ‘improper liberties’, however, most also referred more broadly to sexual acts between men.

Newspaper reporting

In terms of language, newspapers differed significantly from other sources, and contained mostly cases with sexual assaults as the primary driver of prosecutions. The press was fundamental to public discourse of sexual crimes between men. Cocks notes that the reporting of sodomy trials ‘represented a particularly acute conflict between the needs of political transparency and the requirements of public morality’.⁴⁵ Indeed, from the 1790s newspapers were ‘liable to skim over the reporting of sexual offences in particular as being

⁴² LMA, information of John Dove et al, 6 January 1836 (MJ/SP/1836/02/019).

⁴³ See LMA, information of Richard Harris et al, 17 February 1786 (OB/SP/1786/02/019); information of Cornelius Grove et al, 22 January 1828 (MJ/SP/1828/02/052).

⁴⁴ LMA, information of Henry Bowen, 13 May 1774 (MJ/SP/1774/05/006); information of Robert Graham and Thomas Henderson, 17 September 1827 (MJ/SP/1827/09/146).

⁴⁵ Cocks, *Nameless Offences*, 80.

‘unfit for publication’.⁴⁶ As such, a multitude of terminology has been collected which described sexual violence between men in respectable terms. For example, unlike the other sources, references to body parts or clothing were rare, including the euphemism, ‘private parts’, which only appeared in only one report.⁴⁷ Instead, newspapers used a variety of terminology which denounced sexual assaults between men in cultural terms. For example, lack of morality was mentioned in eleven cases throughout the early to mid-nineteenth century, an essential component of respectability.⁴⁸ At the same time, newspapers hid the specific details of sexual assaults by stating narratives were not fit to be described in detail. Stevenson explains: ‘Social codes and metaphors avoiding the use of graphic and sexually explicit detail were deployed at all levels and inexorably encroached into the legal discourse’.⁴⁹ Moreover, unlike the later nineteenth century, sex between men was described with a variety of terminology.⁵⁰ Much of this, again, was used to describe both consensual and non-consensual sexual relations, and can be found throughout reports covering these possibilities.

‘Abominable’ as a term survived usage throughout the period of study, and was especially used in newspaper reports of the early nineteenth century. Two men were separately accused of committing ‘abominable practices’ on men in the early 1830s, for instance.⁵¹ One way reporting differed was the word ‘detestable’, noted in thirteen newspaper reports, lastly in 1859.⁵² These terms indicated the heinous and peculiar nature of the offence. A variety of similar terminology was unique to newspaper reporting, however. Newspapers were the only source where the term ‘nameless’ to describe sexual acts between men was found. This distinction of homosexual acts as ‘nameless’ came partially from the biblical account of Sodom and Gomorrah, told in terms of terror and horror.⁵³ It was used once by

⁴⁶ Grey, “‘Monstrous and Indefensible’?”, 192.

⁴⁷ *The Times*, 31 October 1787.

⁴⁸ For more on morality and the reformation of manners movement, see Joanna Innes, *Inferior Politics: Social Problems and Social Policies in Eighteenth-Century Britain* (Oxford: Oxford University Press, 2009), 179–226.

⁴⁹ Kim Stevenson, ‘Crimes of Moral Outrage: Victorian Encryptions of Sexual Violence’, in *Criminal Conversations: Victorian Crimes, Social Panic and Moral Outrage*, ed. Judith Rowbotham and Kim Stevenson (Illinois: University of Illinois Press, 2005), 232.

⁵⁰ See Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861–1913* (Basingstoke: Palgrave Macmillan, 2005), 43–84.

⁵¹ *The Times*, 20 April 1830; 18 April 1833.

⁵² *Morning Post*, 18 January 1859.

⁵³ Harry Cocks, *Visions of Sodom: Religion, Homoerotic Desire, and the End of the World in England, c.1550–1850* (Chicago: The University of Chicago Press, 2017), 211.

the *Morning Chronicle* and twice by *The Times*.⁵⁴ Two assaults were described as ‘atrocious’, such as an ‘unnatural attempt’ committed by Launcelot Sharpe in the mid-1830s.⁵⁵ In the same vein, an indecent assault against a police officer in Grosvenor-square was stated by *The Times* to be ‘heinous’.⁵⁶ Hence, newspaper reports used some of the same terminology as other sources but additionally used its own, much of it implying shock and trepidation, but was also used to refer to all sexual relations between men.

For example, a favoured term by most of the newspapers of study was ‘disgusting’, first used (in this sample) to describe an assault in 1810 and then used commonly thereafter.⁵⁷ Reports included not only stating that an assault was disgusting, but also that ‘disgusting practices’, ‘disgusting gestures’ and ‘disgusting behaviour’ had taken place.⁵⁸ Moreover, a similar proportion used the comparable term ‘disgraceful’, including the *Morning Chronicle* which described Lewis Cordoné’s assault on a soldier near Tyburn Turnpike as such.⁵⁹ The same paper sometimes favoured ‘dreadful’ instead, used to describe two assaults forty-six years apart.⁶⁰ Another term used was ‘monstrous’, such as by *The Times* and *Morning Post* in 1830 and 1860, respectively.⁶¹ These terms seem to refer more specifically to acting in a contrary fashion to the norm, which did not only include acts of sexual violence between men but the presentation of homosexuality more broadly.

This can also be seen in other terms that appeared throughout all sources but were more prevalent in newspaper reporting. One such was ‘gross’; appearing first in 1823 and in seven cases over the next thirty years, such as a ‘gross attack’ by John Cavill on an eighteen-year-old.⁶² Furthermore, six assaults were referred to in a similar manner as ‘revolting’, including one man accused of ‘revolting conduct’ and a ‘revolting offence’.⁶³ Similarly, the term ‘filthy’, such as how an indecent assault was described in 1841, featured in other sources

⁵⁴ *Morning Chronicle*, 3 July 1823; *The Times*, 31 August 1842; 27 November 1845.

⁵⁵ *Morning Chronicle*, 8 January 1834.

⁵⁶ *The Times*, 3 May 1854.

⁵⁷ *Morning Post*, 18 October 1810.

⁵⁸ *The Times*, 30 July 1829; 16 November 1853; *Reynolds's Weekly Newspaper*, 13 November 1853.

⁵⁹ *Morning Chronicle*, 3 July 1823.

⁶⁰ *Morning Chronicle*, 10 December 1776; 24 October 1822.

⁶¹ *The Times*, 13 April 1830; *Morning Post*, 27 March 1860.

⁶² *Morning Chronicle*, 9 January 1830. This language predated the offence of ‘Gross Indecency’, introduced fifty-five years later with the infamous Labouchere Amendment (section 11) of the *Criminal Law Amendment Act*, 48 & 49 Vict, c.69 (1885).

⁶³ *Morning Post*, 18 January 1859.

but was more frequent in newspapers.⁶⁴ Other language was rare, but unique to newspapers. Harsh terms such as 'vile' have been uncovered only twice, such as a 'vile assault' committed by Thomas Oakley outside a print shop window in 1833.⁶⁵ Only a month later the same paper was describing an indecent assault perpetrated by Charles Baring Wall as 'vulgar' if true.⁶⁶ *The Times* was certainly variable in the words used to describe assaults, even stating that an assault committed in 1854 was 'base'.⁶⁷ In 1860, the *Morning Post* spoke about an assault in a different way, as 'foul'.⁶⁸ As can be seen, sexual assaults were derided in numerous ways. Euphemistic metaphors such as these 'were commonly adopted and interposed into the public lexicon to express linguistically without actually stating the reality of occurrences such as the act of penetration and intercourse', concluded Stevenson.⁶⁹ Furthermore, they include both consensual and non-consensual cases of sex between men.

Newspaper reports often used similar terms to other sources, but what is distinct is a focus on cultural terms which indicated negative associations of sexual relations between men. While abominable and unnatural were part of the common lexicon of male homosexuality, newspapers used a variety of derogatory terms such as disgusting, filthy, and revolting, for example. Indeed, over the course of the nineteenth century, 'reports began to develop a formulaic response...involving the liberal use of asterisks, ellipsis and euphemism'.⁷⁰ While the language of sodomy was lost in newspaper reports over time, it became replaced by a multitude of terms which indicated to readers that reports were of homosexual crime. Many of these implied that acts of homosexuality, including sexually violent ones, were contrary to new modes of decency and respectability.

Not only was the terminology comparable in reports of consensual and non-consensual sex between men, but also the narratives presented within the newspapers. In the reports uncovered, sexual assaults did not receive particular condemnation compared to consensual acts. However, there was some concern expressed about the danger of becoming a victim of

⁶⁴ *The Times*, 15 December 1841; *Morning Post*, 18 January 1859.

⁶⁵ *The Times*, 18 April 1833.

⁶⁶ *The Times*, 13 May 1833.

⁶⁷ *The Times*, 16 March 1854.

⁶⁸ *Morning Post*, 27 March 1860.

⁶⁹ Stevenson, 'Crimes of Moral Outrage', 234.

⁷⁰ Cocks, *Nameless Offences*, 81.

sexual assault in certain spaces. In April 1843 *The Times* noted that there were ‘numerous cases of flagrant assaults at print shop windows’ and the following month *Lloyd’s Weekly Newspaper* stated one perpetrator was a ‘member of a gang of miscreants who infest parks and print shops of the metropolis’.⁷¹ Streets, parks, and print shop windows were frequently reported as spaces of sexual assault by newspapers, examined more thoroughly in the next chapter.⁷² In this way they were warning readers of their dangers, though specific statements such as the above were rare. Furthermore, there was some concern not only about becoming a victim of sexual assault but also about being extorted and accused of committing a sexual assault, i.e. cases with a sexual assault as the tertiary driver of a prosecution. For instance, in 1824 *The Times* noted that these kinds of accusations had become more common over the past twelve months.⁷³ But in general, such statements were infrequent in the evidence uncovered. Therefore, male on male sexual violence does not appear to have been relayed by the press as a particular danger for their primarily heterosexual and male readers.

Trial reports

In comparison to the above sources, trial reports in the *Proceedings* were generally longer, allowing a more fruitful analysis of terminology to be undertaken. Most cases contained a sexual assault as either the secondary, but largely tertiary driver of a prosecution. A trial report generally began with an introductory statement stating the name of the accused and their offence, along with where and when it occurred.⁷⁴ Furthermore, in the offence of sodomy, several cases with a sexual assault as the primary driver of a prosecution contained cultural terms which indicated sexual relations between men. For example, all sodomy offences, both consensual and non-consensual, contained in the late eighteenth century a roughly similar declaration of the act being a horrible, horrid, abominable, detestable, unnatural crime, or a combination of such terms. These words ‘recur in official narratives and are products of theological categories and concepts, common in legal discourse, as

⁷¹ *The Times*, 11 April 1843; *Lloyd’s Weekly Newspaper*, 14 May 1843.

⁷² See Chapter Five, 148-165.

⁷³ *The Times*, 22 October 1824.

⁷⁴ For more on the *Proceedings*, see Chapter One, 29-30.

opposed to colloquial terms', according to Tortorici.⁷⁵ Indeed, sometimes sodomy was 'not to be named among Christians'.⁷⁶ However, these tended not to appear in sodomy crimes of the nineteenth century, which usually contained a lack of information and a simple statement of indictment details.⁷⁷ Indeed, Devereaux found a note by the recorder of London stating that he did not wish for trials of an indecent nature to be published verbatim.⁷⁸

These terms might signal violent acts but varied in individual usage in the *Proceedings* throughout the late eighteenth and nineteenth centuries. 'Detestable' was only used twice outside of these introductory statements due to being a case of highway robbery, and lastly in another in 1785.⁷⁹ On the other hand, 'abominable' saw consistent usage throughout the period of study, especially throughout the nineteenth century. In one sense it was used by victims to state that an assault had been perpetrated on them.⁸⁰ In another it was used in naming the abominable crime of sodomy, as above, but also threatening a man with it, as several cases of extortion in the mid-nineteenth century indicate.⁸¹ The most frequent term however, was the unnatural, as explored above. Again, many of these terms referred to homosexuality more broadly.

The *Proceedings* often deployed terminology separate from other sources which implied that sexual assaults between men were unusual. For example, referring to assaults as 'improper' was used thirteen times between the 1780s and 1840s, with 'improperly' and even 'impropriety' used once, in the latter as the 'impropriety of his accusation', i.e. sexual assault.⁸² Similarly, in three cases the word 'uncommon' appeared in reference to assaults, such as how John Waters stated that a man 'laid hold of me in an uncommon manner'.⁸³ In

⁷⁵ Zeb Tortorici, *Sins Against Nature: Sex and Archives in Colonial New Spain* (London: Duke University Press, 2018), 64.

⁷⁶ *OBP*, trial of Roger Sweetman, September 1785 (t17850914-164).

⁷⁷ For an example, see *OBP*, trial of David Burton, October 1838 (t18381022-2484).

⁷⁸ Simon Devereaux, 'The City and the Sessions Paper: "Public Justice" in London, 1770-1800', *Journal of British Studies* 35, no. 4 (1996): 491, footnote 88.

⁷⁹ *OBP*, trial of Thomas Jones, otherwise Evans, February 1776 (t17760221-5); trial of Roger Sweetman, September 1785 (t17850914-164).

⁸⁰ *OBP*, trial of John Thomas Morgan, January 1832 (t18320105-151); trial of John Aylett et al, December 1838 (t18381217-348).

⁸¹ Such as *OBP*, trial of Edward Fox, July 1847 (t18470705-1654).

⁸² *OBP*, trial of Hugh M'lellan Belfrage et al, March 1846 (t18460330-939).

⁸³ *OBP*, trial of Williams Williams, October 1770 (t17701024-56).

other cases, ‘unusual’ circumstances were noted, such as whether a suspect was acting in a strange manner after committing an assault, along with the unpleasant nature of sexual assaults.⁸⁴ These words imply that the acts were not normal, although as we have seen in previous chapters, this was not the case. The *Proceedings* was also the only source to state ‘penetrate’ or ‘penetrated’, when referring to the forced penetration of a man in the earliest case uncovered, though these specific words did not appear again.⁸⁵ However, much of the above also appeared in consensual cases.

Explicit terminology referring to body parts also appeared in the *Proceedings*, mostly in the late eighteenth century. However, the same or similar words were sometimes slightly censored across the period. Shoemaker noted that ‘any censorship and regulation of the content of the *Proceedings* was essentially self-inflicted by the publisher’ rather than the City of London.⁸⁶ For example, the earliest case collected, in 1761, referred to the perpetrator’s genitalia as a ‘y-d’ (yard). However, ‘anus’ is left uncensored, and another case two years later explicitly stated ‘penis’.⁸⁷ In the following decade, ‘a S - e, a S – e’ appeared in one narrative, whereas in a report six years later it stated sodomite uncensored.⁸⁸ Shortly after, the scrotum was mentioned twice in another case.⁸⁹ By the final decade of the eighteenth century, this mild censorship became more common. Multiple words relating to genitals were censored in a case from 1797, ‘t-s’ (testicles), ‘p-s’ (penis), and, surprisingly, ‘p-e p-s’ (private parts). This latter phrase is odd to be censored as it appeared uncensored in many cases across the entire period. Presumably, as a Baronet appeared as the victim of a robbery and accused by the defendant of sexual assault, this may have led to increased attention on the case and influenced the censorship of certain words.⁹⁰ Furthermore, the nineteenth century brought a shift from using dashes to asterisks, hiding words completely. For example, one man stated in 1818 ‘The prisoner told the sentry I had offered him two

⁸⁴ *OBP*, trial of Thomas Addy, September 1842 (t18420919-2606).

⁸⁵ *OBP*, trial of Thomas Andrews, May 1761 (t17610506-23).

⁸⁶ Robert Shoemaker, ‘The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London’, *Journal of British Studies* 47, no. 3 (2008): 564.

⁸⁷ *OBP*, trial of James Brown, otherwise James Smith, September 1763 (t17630914-52).

⁸⁸ *OBP*, trial of James Stride, Samuel Rudd, and William Miles, July 1777 (t17770702-4); trial of Daniel Hickman otherwise Hickins, July 1783 (t17830723-5).

⁸⁹ *OBP*, trial of Robert Clark, December 1786 (t17861213-107).

⁹⁰ *OBP*, trial of Thomas Davis, July 1797 (t17970712-55).

guineas to ***** him', and in two later cases how men 'put his hand ***'.⁹¹ 'Penis' appeared explicitly twice - once in 1810 and the other in 1852.⁹² Overall then, the *Proceedings* of the late eighteenth century censored explicit terms haphazardly with ellipsis, but during the nineteenth century moved towards using asterisks, making terminology more hidden, though with occasional exceptions. As stated above, finding ways to describe sexual relations, including assaults between men in more respectable terms appears to be the primary reason for these shifts in language.

The *Proceedings* also saw a focus not only on body parts but the clothes. While other sources also mentioned clothing, they featured more heavily in the *Proceedings*. Attention was especially on the lower body; the breeches are mentioned throughout the period, though more so in the late eighteenth century. In two cases they were mentioned six times each, and once eight times.⁹³ Significantly, they appeared mostly in theft offences, especially highway robbery, as assaults were alleged in a victim's defence. Over time, mentions of the breeches switched with the trousers, or 'trowser', which only appeared in the final few decades of the period of study. They were certainly the focus of one case where they were mentioned five times, including 'he made a grab at his trowsers, trying to force his hand inside'.⁹⁴ Furthermore, the flap of the trousers was frequently mentioned due to its position to the private parts: 'he said the prosecutor got down his (prisoner's) flap', in a statement relayed to a police constable.⁹⁵ The clothes, especially the breeches, trousers and flap, were important signifiers of sexual assault between men.

The *Proceedings* was unique in several respects, such as discussing sexual assaults in terms of the unnatural, abominable, or improper. This was stated by the reports themselves, or by victims, perpetrators, and witnesses. What can also be seen is that trial transcripts tended to be more explicit in the late eighteenth century when referring to body parts, with censorship increasing in a variable fashion but cementing in the nineteenth century with the use of asterisks due to more respectable public discourse, and language becoming more

⁹¹ *OBP*, trial of Thomas Hayes, June 1818 (t18180617-4); trial of John Egan, September 1823 (t18230910-78); trial of Thomas Addy, September 1842 (t18420919-2606).

⁹² *OBP*, trial of Willian Cane, July 1810 (t18100718-66); trial of Henry Harrison, August 1852 (t18520816-841).

⁹³ See *OBP*, trial of William Bailey, October 1761 (t17611021-35).

⁹⁴ *OBP*, trial of Frederick Thomas Richards, May 1855 (t18550507-560).

⁹⁵ *OBP*, trial of George Webb, August 1846 (t18460817-1636).

prudish when relating sexual acts between men. It is also in this source that we see frequent mentions of clothing. Hence, terminology related to sexual violence between men in the *Proceedings* was certainly diverse, and sometimes surprising, though rarely differed from consensual sexual relations between men.

As has been seen, terminology referring to sexual violence between men was wide-ranging. Stating sexual acts in reference to sodomy, the unnatural, or the infamous, varied in degrees across the sources. The largest increase was no doubt in usage of indecency, increasing in this period across all sources. However, each also used unique instances of language which was related to their function. Witness statements tended to contain specific details of sexual assaults and were more explicit than other sources, especially about body parts, due to not being seen by the public. The *Proceedings* favoured the unnatural and abominable but also the uncommon or improper, as well as a focus on clothes, as the narratives of prosecutors and defendants were reported at length. The greatest variety is contained within the five newspapers – whose purpose was for public consumption – and which often censored narratives but combined common terms and matched them into phrases, along with containing a multitude of culturally derogatory language to refer to sexual acts between men. Furthermore, it is in the newspapers where indecency was most mentioned.

However, most of the language used to refer to sexual violence was part of the general vocabulary to describe homosexuality more broadly. Terms such as unnatural, indecent, disgusting, private parts, for example, turned up frequently in records containing consensual sex. The only phrase that appears to indicate sexual assault more often was ‘indecent liberties’ or its derivatives. As such, it is difficult to separate cases of consensual and non-consensual sexual relations between men in reference to specific vocabulary alone.

The terminology used to signify homosexuality became increasingly sanitised in public discourse throughout the late eighteenth and nineteenth centuries due to several reasons, including the importance of respectability.⁹⁶ For example, Crone described how between 1780 and 1820 the middle and upper classes replaced legitimate violent expressions with

⁹⁶ Historiography of this concept has been outlined in Chapter One, 13-15, and is further used below, 119-121.

the culture of respectability.⁹⁷ Broadly speaking, Wood has demonstrated how social concern with violence in the late eighteenth and nineteenth centuries manifested into ‘new, self-consciously civilized attitudes’ and mentalities.⁹⁸ At the same time, movements concerned with public morality such as the Society for the Suppression of Vice grew following the loss of the American colonies, the radical publications of Thomas Paine, and the French Revolution.⁹⁹ Such events emphasised calls for a reformation of manners, and sexual morality was a major component of such calls. A proclamation issued by George III – a reissue of one by Queen Anne almost a century prior – was aimed at preventing and punishing indecency, and was directed especially at magistrates.¹⁰⁰ As Vic Gatrell has shown in regard to popular prints, by the 1820s the rise of new sensibilities and respectability dispensed with sexual references and scatology, as the boundaries tightened between the middling and lower classes.¹⁰¹ The period of study also saw legislative changes which gave the police powers to deal with indecency, for instance through the Vagrancy Act (1824) and Town Police Clauses Act (1847).¹⁰²

As such, language describing male on male sexual violence formed part of these cultural shifts. Stevenson described a similar process with regard to sexual violence against women, arguing that in the nineteenth century ‘the increasing “desexualization” of public discourse and rise of respectability meant that these were not topics that could be more broadly or overtly discussed in genteel society’.¹⁰³ However, sex between men could not be ignored. Committals for sodomy, attempted sodomy, and indecent assault increased in the final decades of the eighteenth century and did not dissipate until the mid-nineteenth century.¹⁰⁴ Awareness only grew with several high profile cases of homosexual crimes, including the

⁹⁷ Rosalind Crone, *Violent Victorians: Popular Entertainment in Nineteenth-Century London* (Manchester: Manchester University Press, 2012), 266.

⁹⁸ John Carter Wood, *Violence and Crime in Nineteenth-Century England, The Shadow of Our Refinement* (London: Routledge, 2004), 18.

⁹⁹ Alan Hunt, *Governing Morals: A Social History of Moral Regulation* (Cambridge: Cambridge University Press, 1999), 57.

¹⁰⁰ *Royal Proclamation For the Encouragement of Piety and Virtue, and for the Preventing and Punishing of Vice, Profaneness and Immorality*, 27 Geo.3 (1787).

¹⁰¹ V. A. C. Gatrell, *City of Laughter: Sex and Satire in Eighteenth-Century London* (London: Atlantic Books, 2006), 574-595.

¹⁰² David J. Cox, Candida Harris, Judith Rowbotham and Kim Stevenson, *Public Indecency in England*, 23-24.

¹⁰³ Stevenson, ‘Outrageous Violations’, 38.

¹⁰⁴ Arnold D. Harvey, ‘Prosecutions for Sodomy in England at the Beginning of the Nineteenth Century’, *The Historical Journal* 21, no. 4 (1978): 939-48.

Vere Street Gang (1810) and Bishop of Clogher (1822). The latter was a ‘transitional moment’ according to Upchurch, which led not only to an elevation in the reporting of homosexual crimes, but also transformed it into a topic for mainstream discussion through a dispassionate and detailed tone in liberal newspapers.¹⁰⁵ All these reasons ‘made not talking about it difficult’, explained Cocks.¹⁰⁶

As such, the linguistic shifts described above appear to reflect a growing awareness that sexual relations between men, including male on male sexual violence, was not simply rare, unnatural, and able to be ignored, but occurred with relative frequency (especially in certain spaces). The terminology used to signify these acts, fuelled by increased reporting imbued with ideas of respectability, largely transformed from explicit narratives describing acts of sodomy and ejaculation in the eighteenth century to the sanitised language of indecency in the nineteenth. Overall, this terminology suggests an awareness not only that these acts were no longer marginal, but distasteful and needed to be described in more respectable language.¹⁰⁷ At the same time, it must be recognised that the sample uncovered is small in comparison to the field of prosecutions that appeared in the period of study, therefore any conclusions about the uses of language are tentative.

Narratives

How did victims of sexual assault construct their narratives?

The following sections will shift from specific understandings of terminology to narratives. The narratives of victims are crucial in understanding alleged acts of sexual violence committed against men, and this section details common elements that run throughout. Alleged victims were prosecutors in cases when a sexual assault was the primary and secondary driver of a prosecution, and defendants when it was tertiary. Overall, their narratives appeared in slightly more than two thirds of cases unearthed and analysed during

¹⁰⁵ Charles Upchurch, ‘Politics and the Reporting of Sex between Men in the 1820s’, in *British Queer History: New Approaches and Perspectives*, ed. Brian Lewis (Manchester: Manchester University Press, 2013), 18–33.

¹⁰⁶ Cocks, *Nameless Offences*, 78–80.

¹⁰⁷ It is interesting to compare these linguistic shifts with France, where in the 1780s ‘sodomite’ was replaced by ‘pederast’ as the primary term for describing homosexual relations, largely due to policing practices. See Bryant Ragan, ‘Homosexuality and the French Revolution’, in *From Sodomy Laws to Same-Sex Marriage: International Perspectives since 1789*, ed. Sean Brady and Mark Seymour (London: Bloomsbury Academic, 2019).

this research. More specifically, slightly under a third when a sexual assault was the primary driver of a prosecution, always when it was secondary, and nearly four fifths when it was tertiary.

Their appearance varied heavily depending on the consulted sources. The *Proceedings* focused largely on courtroom narratives from the prosecutor, summarising or omitting much witness and defence narratives, so in tertiary cases their narratives were often seriously curtailed, if they appeared at all.¹⁰⁸ Similarly, newspaper editors made decisions on the length of narratives in their reporting of crimes due to space limitations, which also may have resulted in less space for victim's narratives, whether prosecutor or defendant. They appeared in roughly 50% of all newspaper reports overall, although the proportion varied from paper to paper.¹⁰⁹ Furthermore, both these sources also suffered from censorship and could lack detail as previously discussed. Perhaps the best available consulted source for victim's narratives were witness statements of the Middlesex and Westminster Session Papers, taken by a magistrate on examination, which were by their nature a victim narrative, though are largely cases with a sexual assault as the primary driver of a prosecution. However, it must be remembered these are not simply the truth of 'what happened', but culturally constructed legal documents.¹¹⁰

Despite these issues, this section will ask: how did victims construct their narratives? How did this differ depending on the importance of a sexual assault in a prosecution? The sources utilised reveal several interesting ways in which victims exposed sexual assaults. These include an emphasis on physical violence, noting verbal non-consent, their own resistance and attempts to escape the situation, and a focus on the perpetrator's actions, especially in terms of propositioning and money. These aspects were incredibly important in identifying non-consent, which sometimes relied solely on the narrative of victims, and which might have important implications for the success (or otherwise) of the case and sentence pronounced.

¹⁰⁸ Shoemaker, 'The Old Bailey Proceedings', 566–70.

¹⁰⁹ The *Morning Post* is 43% (42 cases), *Morning Chronicle* is 45% (20 cases), *The Times* is larger at 56% (69 cases), *Lloyds* is higher at 75% (4 cases), and *Reynolds* is highest at 100% (2 cases).

¹¹⁰ Shani D'Cruze, 'Approaching the History of Rape and Sexual Violence: Notes towards Research', *Women's History Review* 1, no. 3 (1992): 379.

As will be demonstrated, these elements appeared in roughly similar proportions whether a sexual assault was the primary, secondary, or tertiary driver of a prosecution. This indicates that in the latter, alleged victims were aware of useful elements to mention when concocting a defence. Indeed, when comparing between types of prosecution, the acts described were incredibly similar.

Physical violence

A principal theme within victim's narratives, and the foremost identifier of non-consent throughout all types of prosecution, was a statement that sexual contact was not consensual. Most often this was paired with a description of the alleged sexual act, such as forced penetration or indecent assault. The language used by victims varied, and the following passages examines frequent terms used to describe acts of sexual violence.

As most instances of sexual assault described unwanted touching on the genitals, this narrative appears most frequently in the cases examined, whether a sexual assault was the primary, secondary, or the tertiary driver of a prosecution. For instance, the most common phrase that appeared in the narratives of victims was how a man 'caught hold' of them. Testifying that an perpetrator 'caught hold of my privates' or similar was a recurrent statement in all types of prosecution.¹¹¹ This indicated that an assault had taken place as their genitals had been touched without their consent. Similarly, 'caught hold of my hand' was also frequent, along with what the perpetrator did with the hand, such as when John Ogle deposed how a man 'caught hold of my hand and kissed it and placed it repeatedly on his private parts'.¹¹² Likewise, another frequent term to denote the same action was 'seized'. It was used in a vivid account given by Charles Morris of his assault by two Frenchmen; he stated that they 'seized him by the arm and dragged him...pressed him in their arms, kissed him'.¹¹³ Moreover, Edward Watson argued that a man 'seized' him 'in an indecent manner' in his defence during his trial for robbery.¹¹⁴ These were not the only terms that indicated

¹¹¹ For a selection, see *LMA*, information of William Barrowcliffe et al, 7 July 1827 (WJ/SP/1827/07/003); *Morning Chronicle*, 24 May 1828; *OBP*, trial of George Middleditch, August 1844 (t18440819-1916).

¹¹² *LMA*, information of John Ogle et al, 16 June 1835 (MJ/SP/1835/06/008).

¹¹³ *Morning Chronicle*, 12 January 1829.

¹¹⁴ *Morning Post*, 23 August 1842.

non-consent. Another was 'he thrust his hand into my breeches', which appeared in multiple cases again in different types of prosecution.¹¹⁵

One useful term that appeared in multiple victim's narratives was that some sort of 'liberties' were taken. The word turns up frequently throughout the whole period here, and could be a euphemistic phrase to identify sexual acts, especially improper or unwelcome ones.¹¹⁶ It was certainly used to indicate sexual assaults against women and children, though it also applied to men too, and had the effect of hiding the specific nature of the acts which took place. For example, a carman prosecuted Charles Beckenham for taking 'liberties with his person'.¹¹⁷ However, use of this word was more frequent when a sexual assault was the tertiary driver of a prosecution, and so alleged in a defence. The most common pairing was 'indecent liberties', which appeared in several cases across the period in a variety of sources, such as how Elias Grey and John Joyce had separately charged other men with taking indecent liberties with them in their defences for extortion.¹¹⁸ Liberties then, was a useful word to indicate a lack of consent from victims, and was used by men as well as women. Furthermore, it more often appeared in a defence.

Conceivably the most obvious term to denote an act of sexual aggression was 'violence', however it appeared infrequently in victim's narratives, only twice when a sexual assault was the primary driver of a prosecution, and twice when it was secondary. The former were both cases of forced penetration, for example Edward Madle stated how a man 'threw me on the Bed with violence...pulling about my private parts and trying to unbutton my flap'.¹¹⁹ In one of the latter, Ralph Hodson testified that a man 'violently seized me by the collar with one hand, and by my penis with the other' while walking down the street in 1792, before being robbed.¹²⁰ Another term which was thought to be useful was 'force', however it was similarly rarely used by victims. It appeared in one case of forced penetration; John

¹¹⁵ *OBP*, trial of James Templeman and George Platt, December 1790 (t17901208-28); trial of William Thompson, May 1792 (t17920523-49); *LMA*, information of Charles Calcott and George Hosey, 15 May 1828 (MJ/SP/1828/05/079).

¹¹⁶ *Oxford English Dictionary Online*, 'liberty, n.1', <http://www.oed.com/view/Entry/107898?rskey=MOLy2&result=1>, September 2020, accessed 2 October 2020.

¹¹⁷ *Reynolds's Weekly Newspaper*, 13 November 1853.

¹¹⁸ *Morning Post*, 19 January 1841; *OBP*, trial of John Joyce, August 1844 (t18440819-1946).

¹¹⁹ *LMA*, information of Andrew Brockley et al, 7 September 1827 (MJ/SP/1827/09/106).

¹²⁰ *OBP*, trial of James Brown, otherwise James Smith, September 1763 (t17630914-52).

Summerson noted in his examination that he ‘found the Prisoner close against me and endeavouring to force his Private Parts up my fundament’ in 1831.¹²¹ In a tertiary prosecution, Thomas Jones complained in 1775 of a man wanting ‘to force his hands into my breeches’ in his defence for extortion.¹²² However in general, although these terms appear to be the more obvious signs of non-consent, they were little used by victims.

Verbal non-consent

Aside from statements of physical violence, another important identifier was a verbal cue that indicated a lack of consent, which appeared throughout all types of prosecution. These included telling the perpetrator to stop, crying out, or attempting to raise the alarm. As with acts of physical violence, these verbal pronouncements were integral in showing that an act was unwanted. Victims of crime certainly knew to shout for aid, loudly and repeatedly.¹²³ For instance, in cases with sexual assaults as the primary driver of a prosecution, Edward Madle ‘said he should not’ when the perpetrator pulled his private parts, and Charles Calcott ‘said don’t do that’ when a man put his hand into his breeches.¹²⁴ Some men were unable to react, with their narratives emphasising their incapacity; John Waters and Michael Oliver both ‘begged for mercy’, upon being sexually assaulted and robbed.¹²⁵ George Hyser was more forceful, stating in his defence for highway robbery that after being sexually assaulted he told the perpetrator ‘you villain, what do you mean?’.¹²⁶ These statements were clearly intended to show juries that sexual contact was an act of assault rather than consensual, and were similarly made whether a sexual assault was the primary, secondary, or tertiary driver of a prosecution.

The most frequent verbal pronouncement of non-consent can be found in attempts to raise the alarm when the assault was taking place, again common across all types of prosecution. For example early in the period of study Richard Coalman ‘called the Watch but could make

¹²¹ *LMA*, information of John Summerson, 13 September 1831 (MJ/SP/1831/09/014).

¹²² *OBP*, trial of Thomas Jones, otherwise Evans, February 1776 (t17760221-5).

¹²³ A. Roger Ekirch, *At Day's Close: A History of Nighttime* (London: Phoenix, 2006), 115.

¹²⁴ *LMA*, information of Andrew Brockley et al, 7 September 1827 (MJ/SP/1827/09/106); information of Charles Calcott and George Hosey, 15 May 1828 (MJ/SP/1828/05/079).

¹²⁵ *OBP*, trial of Williams Williams, October 1770 (t17701024-56); trial of William Jones, May 1800 (t18000528-128).

¹²⁶ *OBP*, trial of George Hyser and George Ellison, May 1787 (t17870523-17).

none hear him', after being sexually assaulted in a public house.¹²⁷ Considering most assaults have been found for the early-mid nineteenth century, calling of the police or constables made up most cries for assistance. William Russell 'shouted out "Police!"' after he was sexually assaulted and robbed, as did many others, signalling the increased police presence on the streets of London.¹²⁸ Impressively, Henry May 'called the police while we were struggling', after being assaulted in a water closet and robbed.¹²⁹ Earlier in the period of study, William Statia 'halloa'd out, Watch!', and was successful in summoning a watchman to take the perpetrator into custody who had 'behaved in an indecent manner' while he was walking through Moorfields at night. However, Statia was then prosecuted for pickpocketing.¹³⁰ Stating that one called for aid while being assaulted was an important part of victim's narratives as it showed that an assault was unwanted, and that the victim wished for assistance. It also, of course, meant that witnesses could be called to testify.

Another way of displaying non-consent was to state that an assault could not be comprehended, which had the additional effect of displaying a lack of understanding concerning sexual relations between men. 'Yes; I asked him what he wanted of me?', was George Cull's reaction after being assaulted by the Earl of Kingston in Westminster.¹³¹ Ralph Hodson 'asked him what he meant?' after being sexually touched, and he was robbed soon after.¹³² William Cane, prosecuted for highway robbery, similarly said 'it was not a thing that I was accustomed to', after a man allegedly touched his private parts.¹³³ Stating incomprehension had the effect of noting ignorance regarding sexual matters between men, also used throughout all types of prosecution.

The opposite can be seen throughout other narratives, which referenced contemporary understandings of sexual relations between men as well as masculinity. Character and reputation were opposed to the sodomite, which was seen as the result of moral degradation.¹³⁴ Indeed, there are multiple mentions of sodomites in the narratives of victims

¹²⁷ *LMA*, information of Richard Coalman, 7 December 1768 (MJ/SP/1768/12/010).

¹²⁸ *OBP*, trial of William Tarbuck, December 1849 (t18491217-223).

¹²⁹ *OBP*, trial of John M'Donnell, October 1850 (t18501021-1758).

¹³⁰ *OBP*, trial of William Statia, October 1781 (t17811017-20).

¹³¹ *The Times*, 1 April 1848.

¹³² *OBP*, trial of James Brown, otherwise James Smith, September 1763 (t17630914-52).

¹³³ *OBP*, trial of William Cane, July 1810 (t18100718-66).

¹³⁴ Cocks, *Nameless Offences*, 119.

across all types of prosecutions. ‘B_ you, do you think I am a _ or what?’, said policeman John Palmer, after he was sexually assaulted by the MP for Guilford.¹³⁵ One man, after being sexually assaulted then robbed, ‘halloed out a S – e, a S – e’.¹³⁶ The mild censorship in these reports hid the words but not their meaning, and readers would have understood these sexual indicators about men having a sexual preference for other men. Several tertiary prosecutions noted the same. Indeed, John Alders said after being assaulted ‘you scoundrel, what do you mean, are there not women enough, what do you mean by it, I do not understand your meaning’.¹³⁷ Another example is in the narrative of Edward Fox, who recalled in his defence for extortion ‘I went, and said to him, You ought to be ashamed to take liberties with a man; there are plenty unfortunate girls about the street, without taking liberties with a man’.¹³⁸

Hence, in several cases across all types of prosecution, the narratives of victims contained not only verbal statements of non-consent, but interweaved them with understandings of contemporary homosexual relations. This could have the effect of weakening the perpetrator’s social status and reputation in the eyes of judges and juries, and thus more likely to side with the victim, especially if they were the defendant in a tertiary prosecution. As can be seen, this was a tactic for both the prosecution and defence.

Resistance

Aside from statements of physical violence or non-consent, declaring that an act was resisted, whether successful or not, showed that it was unwanted. This is present again in similar proportions across all types of prosecution, and usually contained evidence of physically fighting off the perpetrator. One of the more common phrases was ‘I collared him’, for example said by William Wheatley upon being sexually touched outside a print shop window.¹³⁹ Similarly, Henry May ‘immediately struck him in the mouth’, after being sexually assaulted by a man in a water closet and robbed.¹⁴⁰ ‘I knocked him down’ was

¹³⁵ *The Times*, 13 May 1833.

¹³⁶ *OBP*, trial of James Stride, Samuel Rudd, and William Miles, July 1777 (t17770702-4).

¹³⁷ *OBP*, trial of John Alders, February 1768 (t17680224-39).

¹³⁸ *OBP*, trial of Edward Fox, July 1847 (t18470705-1654).

¹³⁹ *LMA*, information of William Wheatley and William Smith, 17 April 1827 (WJ/SP/1827/07/00).

¹⁴⁰ *OBP*, trial of John M'Donnell, October 1850 (t18501021-1758).

George Platt's response to being assaulted, stated in his defence for highway robbery.¹⁴¹ These statements showed that this sexual contact between men was not acceptable, and they were not the kind of men who partook in it.

Some struggles were much more violent than the above. Violent responses to sexual propositioning was thought natural and understandable for respectable men.¹⁴² John Ling stated that he 'struck him several Blows and knocked him down and he disappeared from the house without saying a Word after I struck him', after a sexual assault in a public house.¹⁴³ Perhaps the most violent response to being assaulted was given by Christopher Conlan, which resulted in him being prosecuted for the crime of wounding. Upon being sexually assaulted in a public house, he 'took the poker, which was a very thin one, and struck' the perpetrator.¹⁴⁴ However, a statement given by John Eagan is perhaps the most telling. When asked if he had struck the perpetrator, 'He said he had, and did not wish to deny it, and would strike him again, or any man who behaved indecently or unmanly to him'. He apparently said this to a constable on duty.¹⁴⁵

Resistance then, served two functions. First, it implicitly showed that a sexual act was not consensual. Second, it presented the victim as a man who did not engage in sexual acts between men, and whose testimony was trustworthy in court. This served to shore up the victim's status and remove responsibility for an assault or other crime. While this resistance was usually limited to stopping the assault, sometimes it was more violent.

Another useful indicator of non-consent was an attempt at escaping the situation. In contrast to the above, these statements were only present in under a fifth of cases, similarly low across all types of prosecution. However, they could form an important function in narratives by indicating that a sexual act was unwanted. Escaping was, of course, a common tactic, and no doubt many assaults were hidden as victims simply left and did not report assaults. Some though, did end up reporting the assault after escaping. One man described

¹⁴¹ *OBP*, trial of James Templeman and George Platt, December 1790 (t17901208-28).

¹⁴² Charles Upchurch, *Before Wilde: Sex Between Men in Britain's Age of Reform* (London: University of California Press Ltd, 2009), 181.

¹⁴³ *LMA*, information of John Ling et al, 7 January 1829 (MJ/SP/1829/01/037).

¹⁴⁴ *OBP*, trial of Christopher Conlan, November 1838 (t18381126-95).

¹⁴⁵ *OBP*, trial of John Eagan, September 1823 (t18230910-78).

how after he was indecently assaulted, he 'walked on until he met a policeman'.¹⁴⁶ William Russell did so after he 'ran across the road' to escape William Tarbuck, who had sexually assaulted and robbed him in Hyde Park.¹⁴⁷ On the other hand, alleged victims in tertiary prosecutions more usually commented on the perpetrator running away. Several men followed the perpetrators so they could be arrested.¹⁴⁸ In this way, victims emphasised how they kept perpetrators close until they could be taken into custody.

Sometimes escaping was not so easy when assaults took place indoors, though this may have contributed to the increased likelihood of mentioning it when assaults occurred, and all were found in cases with sexual assault as the primary driver of a prosecution. For example, after being assaulted in bed, George Tomkins wrote how he 'raised myself up and went to the door but found it was locked'.¹⁴⁹ Other men were able to get away from the perpetrator, however. Henry Mundy 'got out of Bed and got into a spare bed in the room'.¹⁵⁰ By testifying that the victim got out of bed as soon as the assault had occurred, they were showing that the sexual contact was unwanted.

Narratives of escape were infrequent compared to other narrative constructions but were a useful way of presenting a sexual act as unwanted. While evidently not as important as the presence of physical violence, non-consent, or resistance, they could serve similar functions in demonstrating non-consent.

Exchange of money

Another important feature in victim's narratives, and the only element that differed somewhat depending on the type of prosecution, was the presence and exchange of money. When a sexual assault was the primary driver of a prosecution, victims stated that money (or items of value) were given to either proposition them or attempt to buy their silence. For example, Thomas Cook was given gin, John Gill bread and cheese, and George Cull a

¹⁴⁶ *The Times*, 8 June 1841.

¹⁴⁷ *OBP*, trial of William Tarbuck, December 1849 (t18491217-223).

¹⁴⁸ *OBP*, trial of Henry Harrison, August 1852 (t18520816-841).

¹⁴⁹ *LMA*, information of George Tomkins, 3 April 1827 (MJ/SP/1827/05/131).

¹⁵⁰ *LMA*, information of Henry Mundy, 13 December 1826 (MJ/SP/1827/01/077).

cigar, all before being sexually assaulted.¹⁵¹ Unusually, after a sexual assault, John Morgan was offered money to enter into the perpetrator's (unstated) business.¹⁵² By focusing on the receipt of money or gifts, victims showed how the perpetrator attempted to proposition them or pay for their silence.

When a sexual assault was the secondary driver of a prosecution, victims were not only sexually assaulted but also robbed. Bleakley has uncovered similar cases for the eighteenth and early nineteenth centuries.¹⁵³ Men gave up varying amounts, for instance one man was forced to borrow a guinea from a landlord, or he would be charged 'with behaving in an indecent and unnatural manner'.¹⁵⁴ Another demanded 2l and forced a man to a pawn shop, where the victim managed to raise the alarm.¹⁵⁵ These prosecutions are summed up well by the alleged testimony of one defendant, who apparently told the prosecutor 'You b—, if you don't give me a sovereign, I will charge you with an indecent assault'.¹⁵⁶

When a sexual assault was the tertiary driver of a prosecution, cases often hinged on whether a defendant took money. Statements of refusal worked for John Clarke, who testified that a man 'put his hands upon my thigh and asked me if I could make it stand...he gave me eighteen pence; I would not have it'. He was acquitted of highway robbery.¹⁵⁷ By emphasising that they had been offered but declined money, defendants were not only denying the offence they were being prosecuted for, but also showed they were free of responsibility for a potential sexual assault, and also that they did not simply accept money to hide a wrong. On the other hand, several men admitted accepting money for their silence, and gave a variety of reasons for doing so. Thomas Bore said 'a shilling was a shilling'. He also stated he did not know whether to prosecute the perpetrator after accepting the money.¹⁵⁸ Thomas Jones gave a telling statement: 'I being poor, and not

¹⁵¹ LMA, information of Thomas Cook and Henry Hall Burhidge, 19 November 1831 (MJ/SP/1831/11/003); *The Times*, 25 June 1833, and 1 April 1848.

¹⁵² *Morning Post*, 27 December 1843.

¹⁵³ Paul Bleakley, 'Accused of an "Abominable Crime": Punishing Homosexual Blackmail Threats in London, 1723–1823', *Crime, Law and Social Change*, 2021.

¹⁵⁴ OBP, trial of Phillip Davis, October 1792 (t17921031-33).

¹⁵⁵ OBP, trial of John Garner, December 1842 (t18421212-293).

¹⁵⁶ OBP, trial of John M'Donnell, October 1850 (t18501021-1758).

¹⁵⁷ OBP, trial of John Clarke, John Pullen, and William Rooke, July 1774 (t17740706-60).

¹⁵⁸ *The Times*, 12 April 1831.

having wherewith to prosecute this man'. He was being prosecuted himself for extortion.¹⁵⁹ Assistance in expenses were decades away at this point, though this is the only time a lack of funds for prosecution was mentioned.¹⁶⁰ Although it may have been the truth, admitting receiving money for silence on a sexual assault was a dangerous tactic and rarely worked in the alleged victim's favour, as it made their testimony suspect, and accusations of sexual assault untrustworthy.

The narratives of victims were central in gaining justice for perceived wrongs. The evidence suggests several elements frequently turned up in cases containing sexual assault between men across all types of prosecutions. Above all was the importance of physical violence as a marker of a sexual assault, and many terms were used by victims to indicate this. Violence and force were more common in cases containing forced penetration, only as the primary driver of a prosecution, and 'liberties' was used more by defendants in tertiary prosecutions. At the same time, a verbal declaration and reported resistance or escape from the sexual acts were intended to show that a sexual act was not consensual. Running through many of these cases was the emphasis that the alleged victim was not a man who had sex with other men, with some narratives attempting to show how the victim was propositioned, including with money or gifts. When a sexual assault was the primary driver of a prosecution money or gifts appeared as tools of propositioning. When it was secondary, it was used for silence, in case a sexual assault was alleged against the victim. In tertiary prosecutions the evidence, found largely in theft offences, often centred on whether a defendant had denied or accepted money. The intention then, was to argue that they were not responsible for the sexual act, and that they had been victims of acts of sexual violence.

Therefore, the narratives of alleged victims were relatively similar across all types of prosecutions, which has important implications in understanding male on male sexual violence. Indeed, comparing cases with a sexual assault as the primary, secondary, or tertiary driver of a prosecution demonstrates that alleged victims made similar claims. On one hand this indicates that sexual assaults alleged in a defence, in tertiary prosecutions, may have been truthful, and that many were actually victims of sexual assault. On the other

¹⁵⁹ *OBP*, trial of Thomas Jones, otherwise Evans, February 1776 (t17760221-5).

¹⁶⁰ See Chapter Three, 60-62.

hand, and perhaps more likely, is that enough was known about sexual violence between men that defendants were able to mount a defence using an accusation of sexual assault in a convincing manner. However, due to the nature of the surviving evidence it is impossible to know for sure.

How did perpetrators defend themselves from accusations of sexual assault?

Now that the narratives of victims have been considered, the next section will turn to the other side – accounts of the alleged perpetrators. These men were defendants when a sexual assault was the primary and secondary driver of a prosecution, and the prosecutors when it was tertiary. In what ways did they defend themselves from accusations of sexual violence? Again, how did this differ between the types of prosecution? There are significant pitfalls in attempting this analysis, not least the shortening or complete absence of a defence narrative – when the perpetrator was a defendant – common in the *Proceedings*. On the other hand, when the perpetrator was prosecutor, much more space was available for their accounts. When investigating newspaper reporting, around half of articles contained a narrative from the perpetrator or their counsel. However, considering that many of these are simply statements of committal, the perpetrator had the option of reserving their defence. Indeed, three newspaper reports stated the perpetrator declined saying anything at all.¹⁶¹ Furthermore, examinations collected from the Middlesex and Westminster Sessions Papers were mostly those of prosecutors rather than defendants. Luckily, more than a third of these contained a statement by the accused, albeit usually only one sentence of denial. Hence, the level of detail varied significantly depending on the source in addition to the role of the perpetrator.

Unsurprisingly, most perpetrators across all prosecutions defended themselves from allegations of sexual assault by simply denying that it ever occurred. For example, when the court asked Richard Gunning, ‘Upon the solemn oath you have taken, had you touched him, or his private parts’, he replied ‘No, I had not gone near him’.¹⁶² Similarly John M’Donnell, charged with robbing and sexually assaulting a head-waiter at the Scotch Stores, said the

¹⁶¹ *The Times*, 8 December 1842, 4 May 1848, 21 May 1849.

¹⁶² *OBP*, trial of John Sylvester, September 1813 (t18130915-26).

man's 'statement is entirely wrong'.¹⁶³ Robert Bendall recollected that a man 'stated that I had taken him round the waist and kissed him, and took hold of his person, and tried to put my hand in his breeches...I said it was false'. The man was arrested and charged with extortion.¹⁶⁴

While there were several common themes that ran throughout the narratives of perpetrators, unlike the victims, there are larger differences depending on the importance of a sexual assault in a prosecution. When it was the primary driver, emphasis tended to be on respectability and character, or that any sexual touching was accidental, or due to intoxication. Perpetrators who robbed and sexually assaulted men, on the other hand, argued that they were the victims of sexual assault. Across all types of prosecution, but especially when a sexual assault was used as a defence, was the presence of extortion. These elements will be examined in turn.

Respectability

When a sexual assault was the primary driver of a prosecution, and rarely otherwise, denial was usually supplemented by statements concerning the character and respectability of the men involved. Literature on the concept of respectability has been explored earlier.¹⁶⁵ As respectability and male same-sex acts could not be reconciled, proving previous good character was a viable tactic in trials for sexual assaults.¹⁶⁶ Upper class men were shielded from accusations by assumptions of their good character.¹⁶⁷ Furthermore, sexual acts between men tended to be committed in private with the utmost discretion, and so evidence often rested on character.¹⁶⁸

Several respectable men employed counsel to speak for them, many of whom emphasised their client's status. For example, in his trial for indecently assaulting a man outside a print shop window in Covent Garden in broad daylight, the counsel for John Brown, a 'respectable

¹⁶³ *OBP*, trial of John M'Donnell, October 1850 (t18501021-1758).

¹⁶⁴ *OBP*, trial of Frederick Thomas Richards, May 1855 (t18550507-560).

¹⁶⁵ See Chapter One, 11-12.

¹⁶⁶ Upchurch, *Before Wilde*, 183.

¹⁶⁷ Cocks, *Nameless Offences*, 119.

¹⁶⁸ Harry Cocks, 'Trials of Character: The Use of Character Evidence in Victorian Sodomy Trials', in *Domestic and International Trials, 1700-2000: The Trial in History*, ed. R. Melikan (Manchester: Manchester University Press, 2003), 37.

tradesman', stated 'He should prove incontestably that his client was a person of great respectability, and had maintained all his life an irreproachable character'.¹⁶⁹ This emphasis on character was not unintentional, and was used to argue that the alleged perpetrator was unable to commit sexual acts on men. Character concerned the likelihood of an alleged sexual act taking place.¹⁷⁰ Furthermore, same-sex desire was seen as antithetical to English middle- and upper-class masculinity, and was unimaginable by a man of good standing.¹⁷¹ This was typical when men committed sexual crimes against women too, as Conley has found.¹⁷² This can be seen in a statement by the counsel for Thomas Ashton Cockayne, deputy master of the Western Grammar School at Brompton, who declared his client 'was a person who had all his life maintained the very highest character for morality and honourable conduct, and who was utterly incapable of acting in the manner described'. He was accused of committing an indecent assault on a police officer.¹⁷³ A similar statement appeared two years previously in the defence for William Somes, a gentleman of independent fortune, accused of an indecent assault on two men during election polling in Middlesex.¹⁷⁴ Hence, it was argued that these men were physically incapable of committing the assaults due to their respectable status.

At the same time, perpetrators and their counsel attempted to discredit the character of alleged victims. Both George Culls and Francis Barnes had accused upper class men of indecent assaults and so their characters and history were interrogated minutely by the defending counsel.¹⁷⁵ A similar searching examination appeared in the trial of a certain Mr Sharp, accused of indecently assaulting a man in Hyde Park. His defence counsel argued that he 'felt it necessary to put a few questions to the prosecutor in order to show who and what he really was, and from which it would be found that he was one of the most abandoned and disgusting fellows who are prowling about London'.¹⁷⁶ These were not the only harsh statements made by defending counsel, another even stated 'he thought the evidence

¹⁶⁹ *Morning Post*, 3 November 1846.

¹⁷⁰ Cocks, 'Trials of Character', 41.

¹⁷¹ Upchurch, *Before Wilde*, 121–22.

¹⁷² Carolyn Conley, *The Unwritten Law; Crime and Justice in Victorian Kent* (Oxford: Oxford University Press, 1991), 173.

¹⁷³ *Morning Post*, 23 October 1849.

¹⁷⁴ *Morning Post*, 11 August 1847.

¹⁷⁵ *The Times*, 12 June 1841; 1 April 1848.

¹⁷⁶ *The Times*, 10 January 1851.

warranted the suggestion which he had made that the prosecutor was not in a sound state of mind'.¹⁷⁷ In any case, several perpetrators prosecuted for sexual assault attempted to sow doubt into the mind of juries by emphasising that complainants were unrespectable.

If perpetrators could convince juries that they were respectable through their social status or past good character, they had a decent shot at being believed. The upper- and middle-class bias was certainly real.¹⁷⁸ However, it must be remembered that juries were made up of men of a similar social status to some alleged perpetrators, who may have empathised with the alleged perpetrators of sexual assaults. Indeed, as the counsel for the MP for Guildford said in his client's indecent assault trial, 'He prayed them to consider for a moment, if any one of them, or any dear friend of theirs, had had the misfortune, most unjustly and falsely, to have such a charge imputed to him'.¹⁷⁹ This statement was intended to place sympathy for a man of similar social status.

Intoxication

Cases with a sexual assault as the primary driver of a prosecution also contained several allusions to drinking. Alcohol was implicated in many crimes, including male on male sexual violence examined here, and prevalent levels of drinking fluctuated across the period under consideration. The role of beer for example, had by the end of eighteenth century largely changed from a drink of necessity to one of pleasure, especially when consumed outside the home.¹⁸⁰ While data on alcohol consumption is lacking for the eighteenth century, partial statistics for the nineteenth century show consumption decreasing for the first few decades of the 1800s, with a boost during the 1830s, and decline until the 1860s.¹⁸¹ Furthermore, it is clear that the tendency to blame alcohol, especially beer, for social disorder amplified in this period.¹⁸²

¹⁷⁷ *The Times*, 8 February 1853.

¹⁷⁸ Upchurch, *Before Wilde*, 112.

¹⁷⁹ *The Times*, 13 May 1833.

¹⁸⁰ John Burnett, *Liquid Pleasures: A Social History of Drinks in Modern Britain* (London: Routledge, 1999), 118.

¹⁸¹ T.R Gourvish and R.G Wilson, *The British Brewing Industry, 1830–1980* (Cambridge: Cambridge University Press, 1994), 30.

¹⁸² Rod Phillips, *Alcohol: A History* (Chapel Hill: University of North Carolina Press, 2014), 155–77.

One defence tactic was to argue for diminished or absolution of responsibility for a sexual assault due to being intoxicated. This was not necessarily a denial that it had occurred, but rather that they had no control over their actions. Although not formally recognised as an excuse in statute, Rabin has found it was used (often successfully) by defendants in the late seventeenth and eighteenth centuries to mitigate severe punishment. Furthermore, judges and jurors may have welcomed mitigation by drunkenness due to the severity of the Bloody Code.¹⁸³ Handler has argued that in the nineteenth century, despite action on forgiving juries in the 1820s and 1830s, that mitigation also functioned for non-fatal violent crimes depending on context.¹⁸⁴

Most perpetrators simply stated that they had been drinking and were unaware that an assault had occurred. This loss of memory was common in Rabin's study.¹⁸⁵ Cases where this was deposed rarely appeared before the 1830s; in one, in his trial for attempted sodomy, Roger Sweetman simply stated 'The prosecutor and me were both very much in liquor, that is all that I can say'. He was convicted.¹⁸⁶ Multiple men attempted to eschew responsibility by arguing that they did not recall the assault. Edward Barton stated he was 'not conscious of doing anything of the sort as I was Drunk', and John Wilson deposed that he 'had been drinking a great quantity of ale, and did not know what occurred'.¹⁸⁷ Both resulted in no bills being found. Indeed, this can also be seen in the case of James Bissett, who deposed that 'It is all false what he is stating, for I was intoxicated and asleep a great part of the time'.¹⁸⁸ The only other guilty verdict appeared in *The Times*, who reported that Thomas Oakley, 'an old infirm man', 'did not deny the charge, but merely pleaded he was tipsy'.¹⁸⁹ In most cases, mitigation did occur once this plea was offered.

Intoxication did not appear in any cases when a sexual assault was the secondary driver of a prosecution, and only rarely when it was tertiary. Henry Embleton admitted he was 'a little

¹⁸³ Dana Rabin, 'Drunkenness and Responsibility for Crime in the Eighteenth Century', *Journal of British Studies* 44, no. 3 (2005): 466.

¹⁸⁴ Phil Handler, 'Intoxication and Criminal Responsibility in England, 1819–1920', *Oxford Journal of Legal Studies* 33, no. 2 (2013): 243–62.

¹⁸⁵ Rabin, 'Drunkenness and Responsibility', 471.

¹⁸⁶ *OBP*, trial of Roger Sweetman, September 1785 (t17850914-164).

¹⁸⁷ *LMA*, information of John Barham and Henry Elund, 26 June 1835 (MJ/SP/1835/06/022); *The Times*, 12 June 1841.

¹⁸⁸ *Lloyd's Weekly Newspaper*, 23 September 1849.

¹⁸⁹ *The Times*, 18 April 1833.

in liquor' when he was robbed, a point the man who accused him of sexual assault in his defence for highway robbery also mentioned.¹⁹⁰ James Verney also said that his 'improper conduct' towards a man 'originated in consequence of Intoxication', though the man went to trial for extortion.¹⁹¹

Hence, several men attempted to deny responsibility due to being intoxicated, showing that there existed a belief that drunkenness could mitigate guilt. Furthermore, the small number of cases examined here appear to agree with assertions that it was a significant mitigating factor for judges and juries, evidenced by the presence of no bills and acquittals, explored further in chapter six. Upchurch argued that although the excuse of drunkenness appears implausible, court officials and respectable individuals 'had a strong desire to deny the existence of such feelings in men of good standing of their social class'.¹⁹² However, this might be extended to cover men of other classes too. Although not stated in most cases, the alleged perpetrator's occupation was varied, including a surgeon and clerk, but also a butler and private, and the unemployed. Hence, the defence of intoxication did not only work for members of a similar social standing to the jury.

Sexual assault

Another tactic of perpetrators, especially in cases with a sexual assault as the secondary driver of a prosecution, was asserting that *they* were in fact the victim of a sexual assault. Hence, not only was a prosecutor stating they were sexually assaulted and robbed, but the defendant was alleging sexual assault. This contrasts with cases in the primary or tertiary category which contain one man accusing the other.¹⁹³ If a sexual partner withdrew their consent, then his evidence could be used to convict without corroboration. However, if both denied consent, then witnesses were required.¹⁹⁴ As stated above, men sexually assaulted and robbed were threatened with this outcome if they disclosed the crimes committed on them.

¹⁹⁰ *OBP*, trial of Thomas Smoakham, April 1798 (t17980418-53).

¹⁹¹ *LMA*, briefs and instructions in case of Abraham Gardener, June 1810 (MJ/SP/1810/06/003-004).

¹⁹² Upchurch, *Before Wilde*, 182.

¹⁹³ See Chapter Two, 47.

¹⁹⁴ Cocks, *Nameless Offences*, 35.

A few examples illustrate this point, the first appearing early in the period under study. John Warren was prosecuting James Stride for highway robbery, testifying that while walking through St James's Park he fell asleep on a bench, intoxicated. Upon waking, he found Stride 'had taken hold of my hand and put it into an indecent place in his breeches' and stolen some money. However, in his defence, Stride argued that he had been sexually assaulted, testifying that Warren 'got hold of my hand and tickled it, and put it upon his thigh' and that 'he kissed me, and behaved very indecent'. Hence, both men were accusing the other of sexual assault, though the offence in question centred around robbery. In the end, another man confessed to robbing Warren with Stride, who had failed to mention these indecencies to the sergeant upon duty that night.¹⁹⁵ A similar process of accusation and counter accusation appeared in another highway robbery trial twenty-three years later.¹⁹⁶

Hence, several alleged perpetrators attempted to defend themselves from accusations of sexual assault by counter-accusing their accuser of sexual assault. In this way, sexual assaults were used by alleged perpetrators to place the burden of proof elsewhere.

Robbery and extortion

Aside from denial – or with it – the most frequent narrative of alleged perpetrators, largely when a sexual assault was the tertiary driver of a prosecution, was a counteraccusation of theft. Homosexual extortion – receiving money after accusing a man of homosexual acts – shifted over the period as it was criminalised as a specific offence, especially in the 1820s.¹⁹⁷ Furthermore, extortion gained power in the nineteenth century due to the likelihood of an accusation appearing in a press report or other means of public exposure.¹⁹⁸

That said, it has been infrequently collected in the narratives of perpetrators in cases with a sexual assault as the primary driver of a prosecution. For instance, the first case uncovered contains such a plea; Thomas Andrews argued that he was asked to give 'smart-money' to 'make up' the charge of sodomy he was being prosecuted for.¹⁹⁹ It also appeared in the singular 'forced to penetrate' case. Charles Gibson stated 'I lost a silk handkerchief and a

¹⁹⁵ *OBP*, trial of James Stride, Samuel Rudd, and William Miles, July 1777 (t17770702-4).

¹⁹⁶ *OBP*, trial of William Jones, May 1800 (t18000528-128).

¹⁹⁷ See Chapter Two, 54-55.

¹⁹⁸ Cocks, *Nameless Offences*, 135.

¹⁹⁹ *OBP*, trial of Thomas Andrews, May 1761 (t17610506-23).

penknife out of my pocket', after the victim had 'forced his discourse to me'.²⁰⁰ In John Dove's examination at the Middlesex Sessions for a sexual assault committed on him in Angel Gardens, the alleged perpetrator simply stated 'This done to extort money of me'.²⁰¹ Similarly, only one man explicitly stated the charge against him of robbery and sexual assault was because the prosecutor 'wanted to extort the price of some ale from me'.²⁰² Hence, perpetrators when a sexual assault was primary or secondary tended to focus on the other elements outlined above.

Conversely, and unsurprisingly, most cases that contained a sexual assault as the tertiary driver of a prosecution centred around robbery or extortion, as evidence of male on male sexual violence was largely uncovered in these offences. For instance, in one of the earliest cases of sexual assault found, James Baker testified he was robbed of several items: a linen handkerchief, an iron key, a pair of leather gloves, a clasp knife, and a tooth-pick case. In his defence, the alleged robber stated he was sexually assaulted while urinating.²⁰³ Similarly, Samuel Swift testified in late 1784 that a man demanded his money when he was walking through Moorfields, and upon being taken into custody the man charged Swift with attempting to commit an unnatural crime.²⁰⁴ Many men argued that they had been accosted in the street and followed, before being threatened with an assault if they did not give money – some losing large amounts in this way. The blackmailer ruled the streets and parks.²⁰⁵ Indeed, a man known only as Mr Young had given up 100l in a year to a man who had 'obtained, by threats of exposing and bringing him to justice for being guilty of a most abominable offence'.²⁰⁶

Some alleged perpetrators testified on being robbed by multiple men, who had created stories of sexual assault to extort money. Richard Burrell deposed that two men had stolen four shillings when he was walking down Wych-street, with one of them alleging that Burrell had sexually assaulted him while he was urinating.²⁰⁷ A similar narrative appeared in the

²⁰⁰ *OBP*, trial of Robert Crook and Charles Gibson, September 1772 (t17720909-18).

²⁰¹ *LMA*, information of John Dove et al, 6 January 1836 (MJ/SP/1836/02/019).

²⁰² *OBP*, trial of John M'Donnell, October 1850 (t18501021-1758).

²⁰³ *OBP*, trial of John Alders, February 1768 (t17680224-39).

²⁰⁴ *OBP*, trial of Edward Greenwood, December 1784 (t17841208-188).

²⁰⁵ Cocks, *Nameless Offences*, 121.

²⁰⁶ *The Times*, 30 July 1829.

²⁰⁷ *OBP*, trial of George Hyser George Ellison, May 1787 (t17870523-17).

testimony of Edmund Lodge, a biographer of genealogy who held the office of the Lancaster Herald.²⁰⁸ Lodge had similarly been walking the streets at night when he was robbed of 30l in notes by two men who stated they were part of Bow Street patrols, and argued he had committed a sexual assault on another man.²⁰⁹

Frequent in these narratives of robbery and extortion was the fear men felt of being accused of committing sexual assaults on other men. On being asked why he gave up a 10l bank note and half a guinea to a man who stated he was sexually assaulted by him in St James's Park, Joseph Butter replied, 'Because I felt the dread of an accusation of that sort, and to get rid of a charge which my mind recoiled at'.²¹⁰ Multiple alleged perpetrators spoke of how an accusation of sexual assault might harm their character. For example, the court asked Mitchell Newman 'you was afraid any body should hear what passed, as it would touch your character?' to which he replied 'I was'.²¹¹ Joseph Pearsall, a messenger at the East India House, was robbed by a man who threatened to call at his work and allege he was sexually assaulted; 'I told him he could not do that, for my character was so well known there'.²¹² Considering the damage such an accusation could do to a man's reputation, this fear is not surprising.

Another feature of alleged perpetrators' narratives was not a denial that sexual touching had taken place, but rather that it was completely accidental. This was potentially risky, as it required admitting that touching occurred, but there was no sexual intent behind it. As such, it only appears in a small number of uncovered cases, and extortion surrounded many. Indeed, the 'casual brush of bodies' could be used as a pretext for an accusation of indecent assault.²¹³ Mitchell Newman stated that a man 'pushed by me, my hand was hanging down and might touch his breeches'. He was accused of sexual assault, before prosecuting the accuser for highway robbery.²¹⁴ In 1830, Morgan Oram admitted that he may have brushed into the man accusing him of sexual assault but it was certainly unintentional, as there were large crowds outside Drury Lane Theatre at the time. The complainant was indicted for

²⁰⁸ See Lucy Peltz, *Lodge, Edmund (1756–1839), Herald and Biographer* (Oxford University Press, 2008).

²⁰⁹ *OBP*, trial of John Hodges, Edward Mahon, and John Rumball, February 1805 (t18050220-32).

²¹⁰ *OBP*, trial of Thomas Cannon, November 1808 (t18081130-35).

²¹¹ *OBP*, trial of Thomas Jones, otherwise Evans, February 1776 (t17760221-5).

²¹² *OBP*, trial of Thomas Attrell, October 1832 (t18321018-1).

²¹³ Cocks, *Nameless Offences*, 131.

²¹⁴ *OBP*, trial of Thomas Jones, otherwise Evans, February 1776 (t17760221-5).

extortion and convicted.²¹⁵ On the other hand, this tactic was used only once when a sexual assault was the primary driver of a prosecution. In a highly publicised case from the early 1840s, William Thomas Elder argued that he tripped on a stone and fell against the prosecutor, who subsequently indicted him for indecent assault.²¹⁶ Alleged perpetrators did not necessarily need to deny that a sexual assault had taken place, but rather that the intention behind it was to rob or extort through an accusation of assault.

Narratives of robbery and threats of extortion appeared frequently in the accounts of alleged sexual perpetrators throughout the late eighteenth and nineteenth centuries in both court records and newspaper reporting, largely in cases with a sexual assault as the tertiary driver of prosecution. What's more, accusations of sexual impropriety with men were believed to be widespread, leading several men to give up their money or possessions. Some perpetrators admitted that sexual touching had taken place, but that it was unintentional. In any case, due to its frequent invocation, extortion was certainly documented as a valid defence tactic for men accused of sexual assaults and was present throughout the evidence uncovered.

Alleged perpetrators used a variety of tactics to defend themselves from accusations of sexual assault, which, unlike the narratives of victims, differed significantly depending on the importance of a sexual assault in a prosecution. When it was the primary driver, perpetrators often emphasised their respectable status while attempting to discredit the character of the men who accused them. Furthermore, many successfully defended themselves by arguing that due to intoxication they did not know if an assault was committed. On the other hand, these elements were rarer when a sexual assault was the secondary or tertiary driver of a prosecution. In the former, many perpetrators accused their prosecutors of sexual assault instead, ringing true on their threats. In the latter, most perpetrators stated they were a victim of extortion, and that the sexual assault was a fabrication – a powerful narrative that exposes the connections between homosexual assaults and blackmail. Above all, issues of extortion and character permeate these cases.

²¹⁵ *OBP*, trial of William Shutter, February 1830 (t18300218-112).

²¹⁶ *The Times*, 11 July 1842.

Conclusion

This chapter has provided qualitative examination of 244 cases of alleged male on male sexual violence committed in the late eighteenth and nineteenth centuries. The intention was to investigate the language of sexual violence and give prominence to the narratives of victims and perpetrators. This was done by exploring frequent words and phrases appearing in narratives, along with how victims constructed their accusations and in what ways perpetrators defended themselves from such.

Analysis of terminology revealed that sexual assaults between men were couched in a wide range of vocabulary, and that each source contained its own particularities. At the same time, much of this language did not refer specifically to male on male sexual violence, but to the representation of homosexuality more broadly. As such, it is not usually possible to identify acts of sexual assault through specific uses of language alone. Furthermore, changes over time were part of cultural shifts in public culture and discourse, and most importantly here, respectability. For instance, in the late-eighteenth century reports generally emphasised the rareness and unusualness of sexual assaults through usage of explicit terminology and terms such as the unnatural. However, rising prosecutions combined with increased newspaper reporting of crime meant other forms of language rose in popularity.

Indeed, witness statements tended to be more explicit than other sources, but also frequently hid violence through words and phrases such as ‘privates’ and ‘private parts’. The *Proceedings* favoured reporting of assaults in terms of the unnatural and abominable, but towards the turn of the nineteenth century explicit terms were hidden with the use of ellipsis, then with asterisks. Newspaper reporting often lacked narratives due to stating the detail of assaults were not fit for the public eye but used a much wider range of terminology, describing them as disgusting, filthy, or revolting. These shifts in describing assaults emphasised affronts to decency and morality, which were constitutive elements of new respectability.²¹⁷ As such, judging by the evidence collected, sexual violence between men could no longer be said to be rare, but was described in new ways as part of broader cultural shifts.

²¹⁷ Smith, *Consumption and the Making of Respectability*, 189–221.

Victims often constructed their narratives of sexual assault by referring to several elements. Foremost among these was a statement of physical violence that occurred, such as unwanted sexual touching or forced penetration – the clear signs of non-consent. Most also emphasised giving a verbal pronouncement at the time of the assault, such as telling the perpetrator to stop or calling out for assistance. Similar proportions indicated resistance to the assault by fighting the perpetrator. Conversely, less than a fifth testified that they had attempted to escape the assault. Finally, some victims foregrounded being given money or gifts for their silence, which differed depending on the type of prosecution. These themes then, were used by victims to indicate that sexual acts were not consensual. Additionally, they were used to emphasise character, and that their narratives should be trusted. Importantly, these elements appeared in similar proportions whether a sexual assault was the primary, secondary, or tertiary driver of a prosecution. For cases where it was tertiary, this indicates that sexual assaults stated in a defence were truthful, or, perhaps more likely, that enough was known about male on male sexual violence that it was possible to concoct a persuasive defence by using these elements.

Perpetrators used many tactics to defend themselves from these accusations of sexual assault. Above all was a denial that any assault had taken place. When a sexual assault was the primary driver of a prosecution, there was often emphasis on their respectability and lack of it in the accuser. Furthermore, several perpetrators gave a plea of drunkenness, testifying a loss of memory, or at least a lack of responsibility for any assault that occurred. Although risky, it seems that in general, this plea was used to either mitigate or throw out charges of sexual assault altogether. When a sexual assault was the secondary driver of a prosecution most perpetrators counter-accused the victim of sexual assault, a dangerous tactic that was not successful in the prosecutions examined. When sexual assault was the tertiary driver of a prosecution, the most frequently cited defence was to argue being a victim of robbery, and that the assault was created in order to extort money – used throughout the entire period of study.

This chapter has revealed how sexual violence between men was represented in certain ways drawing on particular discourses, and has exposed frequent elements that appeared in the narratives of victims and perpetrators. The next chapter will consider the actuality of

this violence, specifically the types of sexual violence represented, where and when it was alleged to have occurred, and the ages and social status of the men implicated.

Chapter Five: Realities and Actualities

What can we learn about the nature of male on male sexual violence from prosecutions? In light of the above discussion of where evidence of male on male sexual violence can be located in court records and newspaper reporting, the courts where prosecutions were heard, and how such acts were represented in the sources researched, this chapter explores the ‘actuality’ of male on male sexual assault. The 244 instances of sexual violence are examined in relation to four major themes: the type of violence, where it occurred, when it happened, and the men involved. Hence, this chapter is concerned principally with instances of sexual assault rather than the way in which homosexual culture functioned throughout the period of study. Above all, this chapter provides important contextual information to understand the nature of sexual violence between men in late eighteenth and nineteenth century London.

Uncovering the ‘actuality’ of historical sexual violence is fraught with difficulties.¹ These sources relayed narratives of sexual assault in different ways which highlight the issues of determining ‘actuality’. For instance, witness examinations in the Middlesex and Westminster Sessions Papers were written by clerks and magistrates may have interrupted complainants with questions; as such these records are not the seamless narratives of victims.² In the *Proceedings*, various testimony was not recorded, especially of defendants.³ Newspaper coverage also often lacked specific detail when reporting sexual offences. Hence, these sources went through multiple mediations before being utilised in the present study, and ultimately the recorded testimonies within them are not authentic versions of events.⁴

A further recurrent problem in this research is lack of detail in the sources consulted, which heavily impacts examination of the ‘facts’ of sexual violence. For instance, many offences in

¹ Shani D’Cruze, ‘Approaching the History of Rape and Sexual Violence: Notes towards Research’, *Women’s History Review* 1, no. 3 (1992): 379.

² S. M. Robertson, ‘What’s Law Got to Do with It? Legal Records and Sexual Histories’, *Journal of the History of Sexuality* 14, no. 1 (2005): 167–70.

³ Robert Shoemaker, ‘The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London’, *Journal of British Studies* 47, no. 3 (2008).

⁴ For more on the advantages and disadvantages of these sources, see Chapter One, 28-35.

newspaper reporting were similarly described as attempts or intents to commit homosexual crimes. While these phrases imply attempted sodomy, historians have found this was a wide term which also included sexual touching or propositioning without any physical contact.⁵ The location and date of an assault was provided in most cases, though specific times were fewer, with some simply reporting general descriptions such as ‘morning’ or ‘evening’. However, the greatest lack of information concerned the ages of participants, which was not disclosed consistently in the sources used in this period. On the other hand, occupations of the men involved was present in a larger proportion of prosecutions. To increase the amount of data found, additional sets of primary sources, including digitised criminal registers and prison records, were consulted for each case.⁶ This resulted in additional material for a small number of cases. As such, patterns in age and social status are presented with a degree of reliability.

Many of these methodological issues involved in researching sexual violence are compounded when concerning men. For instance, the threat of punishment for consensual homosexual acts may have led to some men portraying themselves as innocent victims of sexual assault, rather than willing sexual partners. This is not just an issue in sexual offences: many cases have been uncovered where a defendant claimed they had been sexually assaulted when facing capital charges of theft. As such, this chapter will continue to discuss and compare evidence according to the type of prosecution: whether a sexual assault was the primary offence prosecuted, if it was secondary to a non-sexual offence, or, as in a tertiary case, used as a defence tactic by a defendant in a non-sexual offence to cast doubt on his guilt. Still, as Tortorici perceptively observes, ‘Despite our efforts to create narratives about the desires and experiences of people in the past, they will always remain partly (if not mostly) illegible to us’.⁷

This chapter initially attempts to understand the actuality of sexual violence between men by categorising acts as either forced penetration, sexual assault, or other, less common forms of suffering, such as being forced to penetrate another person. Once these have been

⁵ Charles Upchurch, *Before Wilde: Sex Between Men in Britain’s Age of Reform* (London: University of California Press Ltd, 2009), 83–104.

⁶ See Chapter One, 33–35.

⁷ Zeb Tortorici, *Sins Against Nature: Sex and Archives in Colonial New Spain* (London: Duke University Press, 2018), 242.

explored, emphasis shifts to specific circumstantial information. Where did alleged sexual assaults occur, and were public assaults more likely to be prosecuted than offences which happened in private? Furthermore, did they take place in areas traditionally associated with sex between men, or in a range of locations across the capital? From there, the issue of timing is considered. Were assaults more likely to be committed in some months compared to others, or at certain times of day? The chapter finishes by enquiring into the prosecutors and defendants themselves. Did assaults occur between men of similar age and social standing, or otherwise?

What were the types of sexual violence uncovered?

Analysis begins with examining the various kinds of male to male sexual violence which have been uncovered for the late eighteenth and nineteenth centuries. Both Cocks and Upchurch have studied similar evidence of sex between men, noting that both consensual and non-consensual encounters were reported in court documents and newspaper coverage.⁸ However, they largely explore this in relation to the existence of homosexual cultures and reporting of homosexuality, rather than providing a sustained examination of sexual assault between men. Furthermore, their work does not consider the specific minutiae of such acts. This section then, explores instances of sexual violence in detail, noting common characteristics between them. As will be seen, men suffered several different types of sexual violence in this period, some repeatedly.

The main difficulty in analysing the type of sexual violence is lack of detail in the *Proceedings* and newspaper reporting. In the former, from the 1790s prosecutions reported are short and severely lack detail other than the indictment record. In the latter, although Upchurch has noted there existed more coverage of sexual relations between men that has been assumed, many reports did not contain the necessary detail to distinguish between acts with or without consent. For example, offences were variously described as indecent assaults, unnatural offences, horrible crimes, or otherwise. These phrases could be used to describe multiple types of assault, including forced penetration, sexual touching, or propositioning without any physical contact. Furthermore, reports did not always contain

⁸ Harry Cocks, *Nameless Offences: Homosexual Desire in the Nineteenth Century* (London: I. B. Tauris, 2003), 25–35; Upchurch, *Before Wilde*.

testimony of prosecutors, defendants, or witnesses. Therefore, although there might be many reports of sexual relations between men, a significant proportion do not contain the necessary detail to determine a lack of consent.

Each prosecution was categorised according to the type of sexual violence described by the source. This tended to come from the narrative of the victim, though sometimes the perpetrator and witness testimony. As stated in Chapter One, the categories used below are from the present day: not the offences which men were charged with.⁹ The following section starts by discussing evidence of forced penetration, uncovered infrequently, before moving to consider a unique instance of violence: a man forced to penetrate another man. Next, sexual assault is analysed, and the several permutations contained within it. Finally, assaults against policemen are explored, who comprised the largest occupation group of victims.¹⁰

Forced penetration

Research on forced penetration in the past is severely lacking. While many studies have used evidence of sodomy in court records and newspapers as a route into the investigation of homosexuality in the past, few have focussed specifically on the issue of consent between adults. This type of violence has only been recovered from cases where it is the primary driver of a prosecution.

The earliest case of sexual violence found in the research for this thesis is a narrative of forced penetration which occurred in a lodging house in April 1761. In the subsequent trial for sodomy at the Old Bailey a month later, a guest, John Finimore, testified that at four in the morning he ‘awaked with a violent pain and agony’ and found another man’s ‘y - d in my body’.¹¹ The perpetrator was a victualler – the landlord of the establishment. He received a capital sentence, though this was respited, and he was subsequently granted a free pardon and released two months after the trial.¹² This case is one of the longest cases found, with reporting of the trial split into two editions of the *Proceedings*, the latter half published a

⁹ See Chapter One, 4-5, and for the offences see Chapter Two, 47-58.

¹⁰ See below, 144-147.

¹¹ *Old Bailey Proceedings* (hereafter *OBP*), trial of Thomas Andrews, May 1761 (t17610506-23).

¹² *The National Archives* (hereafter *TNA*), Secretaries of State, State Papers, 29 July 1761 (SP 44/87/34-35).

few days after the former. This is the only case found where this occurred, indicating that it generated a large amount of interest.

Three years later it was included in two separate collections of 'remarkable' trials, including *The Bloody Register*.¹³ These collections have been examined as a type of erotica, containing among other crimes, explicit and lurid witness testimony describing the rape of women to titillate audiences.¹⁴ Indeed, although a subtle difference, the word *yard* was not hyphenated in the *Register* as in the trial transcript was in the *Proceedings*. However, in a similar collection of trials appearing in 1779 as *The Malefactor's Register*, the testimony is expunged: 'what passed, or was presumed to pass, till daylight, it is impossible to relate with any kind of regard to the laws of decency'. Furthermore, the author of this narrative had heard from two members of the jury that the evidence against the perpetrator 'was such that no kind of doubt could remain of his guilt', despite his subsequent pardon.¹⁵ Evidently, this case of forced penetration aroused great curiosity, which continued decades after it had been tried – with the witness testimony censored over time. As this example demonstrates, there appears to have been a declining willingness to bring these acts into the open towards the end of the eighteenth century and into the nineteenth, perhaps arising from a growth in prudery, which can also be witnessed in the lack of detail in the *Proceedings*.

Unsurprisingly, many cases of forced penetration contained testimony relating to penetration, evidence that was necessary for conviction. Usually, searching questions were asked by the court to witnesses in minute detail. For example, the court asked one man 'Can you positively undertake to swear that this man's - was in Brooks's - ?'.¹⁶ Furthermore, multiple questions were asked of a witness in one case about the posture of the men he saw assault each other.¹⁷ The largest proportion of questions were asked in the case of forced

¹³ Anon, *The Bloody Register ... A Select and Judicious Collection of the Most Remarkable Trials for Murder, Treason, Rape, Sodomy, Highway Robbery, Piracy ... From the Year 1700 to the Year 1764, Inclusive* (London: E. and M. Viney, 1764), 248-261; Anon, *Select trials for murder, robbery, burglary, rapes, sodomy, coining...at the Sessions-House in the Old-Bailey...from the year 1741 to the present year, 1764, Inclusive* (London: J. Wilkie, 1764), 121-137.

¹⁴ Peter Wagner, 'The Pornographer in the Courtroom: Trial Reports about Cases of Sexual Crimes and Delinquencies as a Genre of Eighteenth-Century Erotica', in *Sexuality in Eighteenth Century-Britain*, ed. Paul-Gabriel Boucé (Manchester: Manchester University Press, 1982), 120-40.

¹⁵ Anon, *The Malefactor's Register; Or, New Newgate and Tyburn Calendar* (London: Alex Hogg, 1779), 288.

¹⁶ *OBP*, trial of Thomas Burrows, December 1776 (t17761204-2).

¹⁷ *OBP*, trial of William Bailey, October 1761 (t17611021-35).

penetration already discussed. It contained testimony from a surgeon, who examined the prosecutor for twelve minutes in the middle of the trial to determine whether he had been penetrated.¹⁸ Forensic medicine had always been interested in sodomy.¹⁹ This case appears at a moment which saw the beginnings of the professionalisation and influence of medicine, which was an important discourse for discussing sexual relations between men.²⁰ Their influence can especially be seen in cases of rape against women. Doctors wished to have the power to prove the facts of assaults.²¹ In this case, we can see a similar tendency when concerning the penetration of men, too, with the prosecutor examined by multiple surgeons.

Furthermore, the 1761 case contained multiple enquiries concerning ejaculation, another requirement for conviction of sodomy (until 1828). The prosecutor's shirt was stained with semen, tangible evidence on which the trial centred. Fifteen questions were asked by the court about the shirt – more than half of them to witnesses – about where it was, where it had been, who had seen it, if it had been washed, who washed it, and most importantly, whether it was marked. It was even produced in court for the jury to inspect, the court reporter noting 'it appears at the bottom of the fore-part of a reddish colour; the stains all in creases'.²² Surprisingly, only one other report of sodomy in the *Proceedings* that contained sexual violence referred specifically to ejaculation. Multiple references were made by witnesses in a forced to penetrate case – discussed below – of how the perpetrator 'made it f - d in his hand'.²³ In 1827, the year before ejaculation was dropped as an evidential requirement for sodomy convictions, William Girley, who was in the service of the Duke of Clarence – later William IV – noted in his examination 'when he was in me I did not observe anything come front'.²⁴ On the other hand, Richard Harris at multiple points noted

¹⁸ *OBP*, trial of Thomas Andrews, May 1761 (t17610506-23).

¹⁹ Gert Hekma, 'A History of Sexology: Social and Historical Aspects of Sexuality', in *From Sappho to De Sade: Moments in the History of Sexuality*, ed. Jan Brenner (London: Routledge, 1989), 176.

²⁰ Ivan Crozier, 'The Medical Construction of Homosexuality and Its Relation to the Law in Nineteenth-Century England', *Medical History* 45, no. 1 (2001): 61–82.

²¹ Anna Clark, *Women's Silence, Men's Violence: Sexual Assault in England 1770-1845* (London: Pandora Press, 1987), 62.

²² *OBP*, trial of Thomas Andrews, May 1761 (t17610506-23).

²³ *OBP*, trial of Robert Crook and Charles Gibson, September 1772 (t17720909-18).

²⁴ *London Metropolitan Archives* (hereafter *LMA*), information of William Girley, 12 September 1827 (MJ/SP/1827/09/152).

that the perpetrator 'left his nastiness' on him, including on his backside.²⁵ Presumably, the lack of physical evidence in both narratives led to trials for lesser charges than sodomy. Furthermore, while penetration was central in all sodomy trials which contained evidence of sexual assaults, emission less so.

Also uncovered is a narrative of repeated forced penetration which was initially tried at the Middlesex Sessions. In his examination Richard Harris, a pauper residing in Hendon Workhouse, gave evidence of multiple forceful penetrations which occurred while sharing a bed with a fellow pauper. As with the trial discussed above, the prosecutor stated explicitly what happened, the man 'put his Cock into him' towards the end of 1785. He did the same a fortnight later, and again on Boxing Day. The man 'pinched him to make him lay still'.²⁶ The case made it to the Old Bailey in a trial for sodomy – with the detail censored – where he was found not guilty but detained for attempted sodomy instead.²⁷ The *Proceedings* does not contain this trial, as Newgate Prison Calendars reveal he was tried at the General Sessions and imprisoned for three years.²⁸ Although repeated sexual touching has been found in multiple cases, this is the only evidence of recurring forced penetration uncovered.

Two other narratives which led to prosecutions at the Middlesex Sessions contained evidence of attempted forced penetration. A tailor deposed in August 1831 that he was in bed when he 'found the Prisoner close against me and endeavouring to force his Private Parts up my fundament'.²⁹ Nearly two years later, a labourer similarly testified that while in bed in a lodging house he 'was awake by finding some Person in my Bed, had his arms round me & had hold of my private parts with his Hand and his private parts were between my Thighs and he was trying as much as he could to get my Thighs open'.³⁰ Although the obvious offence to charge was attempted sodomy, the former examination stated 'unnatural misdemeanour' while the latter was instead charged as an indecent assault, though no evidence of subsequent trials have been found. On the other hand, three other examinations led to trials for the attempt. Roger Sweetman was initially prosecuted for the

²⁵ LMA, information of Richard Harris et al, 17 February 1786 (OB/SP/1786/02/019).

²⁶ Ibid.

²⁷ OBP, trial of John Cole, February 1786 (t17860222-129).

²⁸ TNA, Newgate Prison Calendar, 22 February 1786 (HO77/1/370); 26 April 1786 (HO77/1/388).

²⁹ LMA, information of John Summerson, 13 September 1831 (MJ/SP/1831/09/014).

³⁰ LMA, information of Robert Jervins et al, 18 May 1833 (MJ/SP/1833/05/051).

full charge of sodomy but this was dropped to the attempt, presumably due to lack of evidence.³¹ Another workhouse forced penetration – this time in Marylebone – occurred in 1827 with the prosecutor, Henry Godbold, deposing that a man ‘put his privates against my bare bottom, and pushed hard against me and his private parts went into my bottom a little way’.³² While the examination stated ‘unnatural misdemeanour’ he was convicted of attempted sodomy, and imprisoned for six months.³³

This can also be seen in another assault worth briefly discussing, which involved a police officer and the potential use of drugs, reported in *The Times*. According to the report, an officer was approached by George Sharp who wanted to have someone arrested, and both men went to Sharp’s house. Upon there Sharp offered the officer a drink, which he initially refused, but then conceded. Shortly after, he ‘felt giddy, and as if he was going to sleep, and the prisoner then pushed him on a sofa, or chair, and he nearly fell asleep. He was roused by the prisoner’s conduct (which is unfit to be described)’.³⁴ While not clear, this narrative suggests an attempted forced penetration with the use of drugs – a modern sounding offence. Again, this is an assault without a specific offence category. Although *The Times* stated the charge as an indecent assault, the subsequent Old Bailey trial was for ‘unlawfully and indecently exposing his person’.³⁵ On the other hand, Prison Calendars and Home Office Registers focused on incitement.³⁶ Hence, this was an offence which covered multiple acts and was not simply placed into any. The use of drugs was also unique and has not been found elsewhere.

Overall, the number of prosecutions which contained explicit narratives of forced penetration and attempted forced penetration are few in proportion, numbering 3.7% of the total cases of male to male sexual violence uncovered, which is perhaps unsurprising given the high standard of proof. All were the primary driver of a prosecution and appeared in the court records, especially in examinations at the Middlesex Sessions, due to the higher likelihood of containing explicit testimony. What can be seen in many of these prosecutions

³¹ *OBP*, trial of Roger Sweetman, September 1785 (t17850914-163); (t17850914-164).

³² *LMA*, information of Henry Godbold et al, 23 December 1826 (MJ/SP/1827/01/074).

³³ *TNA*, Home Office: Criminal Registers, Middlesex, 1791-1849, 1827 (HO26/33).

³⁴ *The Times*, 6 July 1850.

³⁵ *OBP*, trial of George Sharpe, August 1850 (t18500819-1513).

³⁶ ‘fely assaulting Willm Ivatts with intent to incite him’, *TNA*, Newgate Prison Calendar, 24 August 1849 (HO77/57/17); ‘Only inciting a person to commit B y’, Home Office: Criminal Registers, 1850 (HO27/93).

is a focus on the requirements for conviction, evidence of penetration, though lesser so ejaculation. It is possible that more cases of forced penetration came before the Old Bailey, but this cannot be ascertained due to a lack of detail. Thus, it is possible that more instances of forced penetration occurred than has been uncovered in the present research.

Forced to penetrate

One unique case of sexual victimisation fits into the category termed ‘forced to penetrate’, and exists outside the grouping of prosecutions as primary, secondary, or tertiary.

Historically, forced to penetrate research has focused on experiences of slaves in America.³⁷

Research is lacking on men forced to penetrate other men in a British context; men forced to penetrate women in recent times has attracted some attention however.³⁸ The case uncovered here appeared in the *Proceedings* almost two hundred and fifty years ago. On the 3rd of September 1772, Robert Crook was at the Red Lion public house, and went outside to ‘make water’. The following account is given by multiple witnesses. Crook told a friend that a man named Charles Gibson ‘put his hand in his breeches, and pulled out his y – d... he pushed him down upon the seat, sit upon him, laid hold of his y – d, and pushed it into his b – e’. A headborough confirmed this account, who was told by Crook that the man ‘forced me to bugger him twice last Thursday night’.³⁹

We do not receive this account from Crook himself because he was being prosecuted by ‘the parish’ along with Gibson for sodomy. By admitting that he penetrated Gibson, even under force or duress, he was admitting that he committed anal penetration. Indeed, on being taken before a magistrate, ‘he looked upon them both alike guilty, and committed them both’. The court even took the time to emphasise this in the middle of the trial: ‘the said Robert Crook is committed...upon his own confession’. Consent was immaterial as he admitted criminal culpability. In his defence Crook said nothing more, though Gibson asked why he had not been immediately arrested following the assault and noted the lack of physical evidence of ejaculation, along with some lost items. He did not call any witnesses,

³⁷ Thomas A. Foster, ‘The Sexual Abuse of Black Men under American Slavery’, *Journal of the History of Sexuality* 20, no. 3 (2011): 445–64; *Rethinking Rufus: Sexual Violations of Enslaved Men* (Athens: The University of Georgia Press, 2019).

³⁸ Siobhan Weare, ‘The Penetrative Offence in Section 4 of the Sexual Offences Act 2003: Alleged perpetrators, Victims, and Outcomes After Detection’, *The British Journal of Criminology* 60, no. 4 (2020): 930–48.

³⁹ *OBP*, trial of Robert Crook and Charles Gibson, September 1772 (t17720909-18).

though Crook called seven, who all gave him a good character and who deposed ‘that he never had reason to suspect him addicted to any thing of the sort’. The case ended in acquittal for both men, presumably due to a lack of witnesses.

This is a unique case that shows the range of sexual victimisation that men suffered. Furthermore, it usefully shows the complicated place of consent in sexual relations between men. Although in the assaults described in the previous sections consent played an important role, in this case it was largely inconsequential to the magistrate; despite arguing that he had been forced, Crook had committed sodomy and was prosecuted for it. Above all, this case shows that the law was ill equipped to deal with such a complex case – and indeed still is.⁴⁰ Furthermore, it is possible that this type of assault may have appeared more frequently than has been found and was even more hidden than other assaults as it required admitting penetrating another man, and potentially being prosecuted for it.

Sexual assaults

The definition of ‘sexual assault’ used here as a category of analysis – which was not in use in this period – is a non-consensual sexual act which fell short of penetration. These acts include unwanted touching of a man’s genitals, a perpetrator forcing a man to touch their own, or unsolicited kissing. Sexual assaults have been found in prosecutions for the offence of indecent assault, for example how Thomas Exton prosecuted for this offence after a man ‘caught hold of my Private parts’.⁴¹ However, not all indecent assaults were sexual assaults, as this charge contained consensual sexual acts too, as Cocks has found.⁴² Furthermore, often there was a lack of information that makes categorisation difficult.⁴³ While uncertain, there is at the least a suspicion of sexual assault. Furthermore, indecent assault included a range of behaviours, which most of the time were not made explicit. Most collected have come from the court records, especially the *Proceedings*, due to the higher likelihood of containing explicit testimony. Hence, this section examines cases with explicit narratives of

⁴⁰ Siobhan Weare, “‘Oh You’re a Guy, How Could You Be Raped by a Woman, That Makes No Sense’: Towards a Case for Legally Recognising and Labelling “Forced-to-Penetrate” Cases as Rape’, *International Journal of Law in Context* 14, no. 1 (2018): 110–31.

⁴¹ *Morning Chronicle*, 24 May 1828.

⁴² Cocks, *Nameless Offences*, 28–33.

⁴³ Most charges of indecent assault that appeared in newspapers examined simply stated an ‘indecent assault on’ or ‘indecently assaulted’, rather than detailing exactly what occurred.

sexual assault, which was the largest type of violence uncovered across all types of prosecution. As the acts described were similar whether a sexual assault was the primary, secondary, or tertiary driver of a prosecution, they will be dealt with together.

Most sexual assaults detailed the unwanted touching of a man's genitals, evidence which appeared throughout the entire period of study in all types of prosecutions. In one of the earliest cases with a sexual assault as the primary driver of a prosecution, Richard Coalman was in a public house when a man 'Put his hand to this Informants Breeches and upon his Private Parts'.⁴⁴ Most secondary cases contained a similar narrative, for instance, Ralph Hodson stated that a man 'violently seized me by the collar with one hand, and by my penis with the other'.⁴⁵ When a sexual assault was used as a defence in tertiary cases, few did not contain a statement by the defendant that the prosecutor touched their genitals. In 1856, James Williamson testified that a member of the clergy 'put his hand to my person', in his defence for extortion.⁴⁶ Cocks deduces that unwanted advances such as these show that consenting sex was readily available in London, as there was a clear expectation of acceptance.⁴⁷ Indeed, many primary cases uncovered appear to confirm this. But, further, that most sexual assaults, whether it was the primary, secondary, or tertiary driver of a case, alluded to a man touching another man's genitals. Not only did men prosecute others for it, but defendants being prosecuted for non-sexual offences used such narratives to increase the believability of their accusations, as it appears widespread.

Several assaults described the perpetrator using the victim's hand to touch the perpetrator's genitals, though at a much lower proportion than the above. William Henry Waite, a clerk, described how when walking down Oxford Street, a man 'took hold of my hand, squeezed it and put it against his private parts'.⁴⁸ In contrast to the above, it only occurred in one secondary and few tertiary prosecutions. Another type of act was exposure of the genitals, such as how a man 'put his hand round and took hold of my penis in a very indecent manner, and turned round and exposed himself to me', as said Henry Harrison,

⁴⁴ LMA, information of Richard Coalman, 7 December 1768 (MJ/SP/1768/12/010).

⁴⁵ OBP, trial of James Brown, otherwise James Smith, September 1763 (t17630914-52).

⁴⁶ OBP, trial of James Williamson, August 1856 (t18560818-785).

⁴⁷ Cocks, *Nameless Offences*, 27.

⁴⁸ LMA, information of William Henry Waite and Joseph Usher, 10 July 1826 (MJ/SP/1826/09/138).

prosecuted in a tertiary case for extortion.⁴⁹ Furthermore, another man was extorted by the threats of disclosure that he exposed himself to a nineteen year old, another tertiary case.⁵⁰

Furthermore, seizing the genitals of another man also occurred in conjunction with a man touching their own, largely in prosecutions with a sexual assault as the primary driver. Tailor James Morgan described clearly how a man ‘took that hand and pressed it to his Privates, on the outside, and then he took my left hand, out of my Trousers Pocket and put his own hand in to the bottom of my Pocket’.⁵¹ Indeed, the clothes were a focal point in many sexual assaults. In his examination, John Williams noted how a man ‘began to play with my whiskers & press me to him & hug me as if I had been a woman. He afterwards passed his hand down the outside of my small Clothes’.⁵² The breeches were commonly cited in narratives. ‘He thrust his hand into my breeches’ was a frequent description in sexual assaults, across all types of prosecution.⁵³

Several cases noted the act of unwanted kissing, usually in conjunction with genital touching, and is split evenly by the type of prosecution. In a tertiary case of extortion, John Thomas Morgan testified that a landlord ‘had put his arm round his neck, kissed him, gone down on his knees, unbuttoned his breeches, and behaved in an indecent manner to him’.⁵⁴ The singular case of murder uncovered contained a narrative of unwanted kissing. William Trott testified that the deceased ‘clapped his two hands on each side my face, and kissed me’, before a scuffle ensued involving others and ending in the death of the perpetrator.⁵⁵

One case shows how unwanted kissing was often part of a larger narrative of sexual assault. It concerned a group of men who met up for sex, using a house that was previously the haunt of fifty men, who ‘never suffered any woman to enter into the house, but did all the household work themselves’.⁵⁶ After being taken there, Anthony Loame described how

⁴⁹ *OBP*, trial of Henry Harrison, August 1852 (t18520816-841).

⁵⁰ *OBP*, trial of Frederick Augustine Moore, August 1848 (t18480821-1991); trial of Frederick Augustine Moore and John Moore, September 1848 (t18480918-2104).

⁵¹ *LMA*, information of James Morgan et al, 27 August 1833 (MJ/SP/1833/09/063).

⁵² *LMA*, information of Henry Perry et al, 11 April 1836 (MJ/SP/1836/05/012).

⁵³ For example, *OBP*, trial of James Templeman and George Platt, December 1790 (t17901208-28); *LMA*, information of Charles Calcott and George Hosey, 15 May 1828 (MJ/SP/1828/05/079).

⁵⁴ *OBP*, trial of John Thomas Morgan, January 1832 (t18320105-151).

⁵⁵ *OBP*, trial of Robert Clark, December 1786 (t17861213-107).

⁵⁶ *Morning Post*, 5 December 1776.

multiple men began intimate relations with each other. He was propositioned and describes how they were 'kissing and slavering over me...they began kissing me, and used me very ill'. They prevented his escape, stating 'they took the key out of the door'.⁵⁷ However, the indictment was not for assaulting Loame, but for Burrows committing consensual sodomy with a separate man called Brooks, who had not been caught. Hence, in these several trials focus was less on the assault of Loame, but sexual intercourse with Brooks. The report of this trial in the *Morning Post* gave little information, aside from the detail that there were apparently fourteen members of the gang.⁵⁸ In the end, Burrows was executed.⁵⁹

Police victims

Also of interest are several police officers who were victims of sexual assault, with such acts forming the primary core of many prosecutions. Upchurch found at least one case in every decade in his study (1820-1870), and notes the irony of placing young men alone on the streets at night to deter crime, as this made them targets of other, often wealthier, men.⁶⁰ In the present thesis, a larger thirty-two instances of assault on policemen have been uncovered.

Sexual assaults on policemen raise the issue of entrapment. This practice gained attention in 1830 due to a series of traps laid for the purposes of arresting men suspected of committing homosexual crimes in Hyde Park, including one sexual assault recovered here. The officer stated he had arrested five men in the previous fortnight while dressed in plain clothes.⁶¹ However, these practices were controversial, and stopped as public opinion turned against the police.⁶² Other cases of sexual assault show its continuation, however. Three years later Thomas Tipper was ordered to dress in plain clothes outside print shop windows, and subsequently arrested several men for homosexual crimes.⁶³ In 1835, John Ogle noted in his examination that a man had 'caught hold of my hand and kissed it and placed it repeatedly on his private parts', before requesting a meeting the following night. Ogle agreed, and laid

⁵⁷ *OBP*, trial of Thomas Burrows, December 1776 (t17761204-2).

⁵⁸ *Morning Post*, 6 December 1776.

⁵⁹ *The Digital Panopticon*, Thomas Burrows, <https://www.digitalpanopticon.org/life?id=obpt17761204-2-defend63>, accessed 17 March 2020.

⁶⁰ Upchurch, *Before Wilde*, 112–13.

⁶¹ *The Times*, 13 April 1830.

⁶² Upchurch, *Before Wilde*, 127.

⁶³ This is dealt with in more detail below, 148.

a trap with other constables, arresting the man once he dropped his trousers.⁶⁴ While these cases indicate that the practice may have partially continued, most sexual assaults on policemen uncovered did not contain narratives of entrapment. Furthermore, cross-referencing by location shows a variety of spaces of sexual assault rather than specific areas, indicating that constables did not necessarily venture into specific locations to entrap men, though this data is incomplete.⁶⁵

Only one case has been uncovered before the early nineteenth century, unsurprisingly given the relative numbers of police and their duties at this time.⁶⁶ The short report in the *Morning Post* from 1776 stated that a man named Thomas was indicted by a man called Payne, a constable, 'for a Sodomitical attack', to which he was sentenced to twelve months imprisonment and to stand once in the pillory.⁶⁷ This punishment indicates either a sexual assault or attempted forced penetration, but there were no witness statements or other detail in the report.

The next case uncovered involving a policeman appeared forty-seven years later (1823). In his testimony, Weaver, a watchman, stated that he was walking the streets with company when he was assaulted by a sixteen or seventeen-year-old clerk multiple times. This is the only case where a perpetrator was under 18. Weaver was admonished by the magistrate who asked why Weaver did not knock the boy down and take him into custody after the initial assault, and the boy was found not guilty.⁶⁸ Four years later, a patrol of Bow Street, William Wheatley, stated he had been standing outside a print shop window when he was sexually touched by another man; this was found in his examination at the Westminster Sessions. Unlike one of the examinations for Thomas Tipper mentioned above, he mentions only being on duty in a neighbouring street rather than being ordered to watch the print shop purposefully.⁶⁹

⁶⁴ LMA, information of John Ogle et al, 16 June 1835 (MJ/SP/1835/06/008).

⁶⁵ 19 of 32 cases of sexual assault on policemen contained the location where it occurred and follow the general patterns for all instances of sexual violence, explored in the next section. The area featured most was Marylebone (4 times), then Covent Garden and Mayfair (2), with 11 other locations only mentioned once.

⁶⁶ See Chapter Three, 62-66, on policing.

⁶⁷ *Morning Post*, 3 December 1776.

⁶⁸ *Morning Chronicle*, 24 July 1823.

⁶⁹ LMA, information of William Wheatley and William Smith, 17 April 1827 (WJ/SP/1827/07/00).

The proportion of policemen as victims of sexual assaults increased substantially in the 1830s to ten cases, the highest proportion for any decade. All took place outside and involved some sort of sexual touching. The high-profile case against Charles Baring Wall, MP for Guildford, was for assaulting policeman John Palmer. Conviction ultimately came down to questions of consistency in each man's narrative and their character, with Wall winning the case after moving it to the Court of King's Bench.⁷⁰ More interesting perhaps is one constable, Thomas Tipper, who appeared as a victim of sexual assault outside print shop windows three times in a short period. The first was when *The Times* reported a 'vile assault', by 'an old infirm man', who was imprisoned for twelve months with hard labour for the offence.⁷¹ Dated the same day as this report is an examination at the same Middlesex Sessions, but this time for an assault by William Berryman. Tipper stated that Berryman 'put his hand on my private parts and pulled them about'.⁷² In another examination fifteen days later, Tipper similarly stated that another man 'put his hand in my private parts and rubbed his hand in that position up and down'.⁷³ In the newspaper report and former examination, Tipper stated that he received orders to put himself in plain clothes and position himself there purposefully, giving an indication of policing practices regarding print shop windows. Indeed, they were certainly spaces of propositioning and sexual assault.⁷⁴

The number of assaults declined slightly for the following two decades, which contained eight cases each. All but one was found in newspaper reporting, the other a case of extortion.⁷⁵ Only half gave the full name of the officer, with four reports not mentioning any name at all. Furthermore, fewer than half gave any mention of the location where the assault occurred, though judging by the other reports, it is likely to have been on the streets. Where witness statements are available, many described how the men were approached while on duty. For example, officer Bartlett stated how a man 'walked with him for some distance round his beat, and upon more than one occasion put questions to him of a shamefully indelicate nature', before committing an indecent assault.⁷⁶ Several cases

⁷⁰ *The Times*, 13 May 1833. See Upchurch, *Before Wilde*, 112–15, for a brief discussion of the case.

⁷¹ *The Times*, 18 April 1833.

⁷² LMA, information of Thomas Tipper and John Smith, 18 April 1833 (MJ/SP/1833/05/003).

⁷³ LMA, information of Thomas Tipper et al, 3 May 1833 (MJ/SP/1833/05/016).

⁷⁴ See below, 161–162.

⁷⁵ OBP, trial of William Risley, February 1855 (t18550226-349).

⁷⁶ *Morning Post*, 30 November 1847.

indicated the exchange of money for sex. In one, a fifty-year-old slipped a shilling into officer Alfred Carter's hand, evidently propositioning him.⁷⁷ Similarly, Henry Day was offered the larger amount of a sovereign by a sixty-year-old man, before increasing this on the officer's refusal. He then committed an indecent assault and offered 100-200l for his release.⁷⁸ The final two cases collected in the thesis were for assaults on policemen in 1860, both for indecent assaults and contained little detail.

It is possible that more assaults were committed on policemen than have been uncovered here, especially due to the possibility that money was exchanged to avoid prosecution. The starting constable was paid 19s a week in the 1830s, equivalent to a semi-skilled worker and less than the Bow Street Runners seventy years before. Furthermore, shifts included ten to twelve hours of work.⁷⁹ Hence, due to the nature of their role, policemen were evidently vulnerable to sexual assault. While the cases collected here appear to concur with Upchurch's argument that policemen were propositioned by older and wealthier men, it must be added that some of these were sexual assaults, and the frequency of cases collected indicates that propositioning officers was a practice that sometimes backfired.

Research has uncovered various types of sexual violence which men suffered in the late eighteenth and nineteenth centuries. Evidence of forced penetration is lacking, and mostly contained in the late eighteenth century, and only when it was the primary offence prosecuted. On the other hand, many instances were for sexual touching on the genitals, either by the perpetrator touching a man's or making another man touch theirs, and these acts were most common when a sexual assault was the primary, secondary, or tertiary driver of a prosecution. This ubiquity across different types of cases signals that it was a standard way of accusing another man of sexual assault, whether a victim was the prosecutor or the defendant. Furthermore, in tertiary cases, use of sexual assault over forced penetration was more common perhaps due to the lower evidential requirements proving it required.

⁷⁷ *Morning Post*, 31 December 1843.

⁷⁸ *The Times*, 15 December 1841.

⁷⁹ Upchurch, *Before Wilde*, 120.

At the same time, occasionally unique cases have been found, such as the singular forced to penetrate prosecution, and use of drugs. The lack of reporting of some types of sexual violence is partially due to censorship in the sources consulted, especially for the nineteenth century, and is part of cultural shifts in terms of respectability.⁸⁰ Many reports in the *Proceedings* and newspaper reporting contained a substantial lack of detail, making analysis of the types of sexual victimisation men suffered difficult. However, it can be seen that men suffered (or sometimes alleged) a variety of sexual violence in the late eighteenth and nineteenth centuries.

Where were the locations in allegations of sexual assault?

Male on male sexual violence can be understood more fully by examining the locations it was alleged to have occurred. In the period of study, as now, London was essentially a patchwork of local areas, neighbourhoods, and parishes 'set amidst a large and amorphous urban region'.⁸¹ Important to the present study were the distinctions between the western and eastern parts, and the City. The West End was located mostly in the City of Westminster, and emerging as the wealthy, fashionable, entertainment centre of London. On the other hand, the east was home to a largely working-class population. Complicating matters was the City of London, a square mile located in the centre of the capital with its own governance and police force.⁸² As will be seen, sexual violence between men was alleged to have been committed across all these locations, though to varying degrees.⁸³

Scholars have found that in this period consenting sexual relations between men took place in a diverse range of locations, not simply a select few streets and parks.⁸⁴ The following section queries this finding by focusing on sexual acts between men which lacked consent. A location was provided in slightly more than three quarters of cases, 189 prosecutions in total, allowing a robust analysis to take place. The following section is split by the type of

⁸⁰ This is explored in more detail in Chapter Four, 106-108.

⁸¹ Leonard Schwarz, 'London 1700-1840', in *The Cambridge Urban History of Britain, Volume II: 1540-1840*, ed. Peter Clark (Cambridge: Cambridge University Press, 2000), 647.

⁸² See Andrew T. Harris, *Policing the City: Crime and Legal Authority in London, 1780-1840* (Columbus: Ohio State University Press, 2004).

⁸³ See Appendix B for a contemporary map overlaid with the clusters of cases collected across all types of prosecution.

⁸⁴ Upchurch, *Before Wilde*, 69; Rictor Norton, 'Recovering Gay History from the Old Bailey', *London Journal* 30, no. 1 (2005): 39.

prosecution, whether a sexual assault was the primary, secondary, or tertiary driver of a case, allowing examination of frequent locations in certain types of prosecutions.

Two principal themes drive this analysis. The first concerns the type of location itself, and how public or private it was. Here, public is used to mean outdoors and private indoors, though, as Joanne Bailey has noted when considering marital violence, ‘public’ appears to have demarcated an act that was witnessed and a ‘private’ one not witnessed.⁸⁵ Were public assaults, with the potential for more witnesses present, more or less likely to be appear in the surviving records than private ones? Secondly, were assaults allegedly committed in spaces associated with male homosexuality, such as certain parks or streets where men were likely to meet for sex, or in a variety of locations across the capital? These questions allow us to comprehend how visible, and how random, sexual violence between men was or was alleged to be, in late eighteenth and nineteenth century London.

Most of the surviving evidence pertains to public acts of male on male sexual violence. While it is possible that more instances of sexual assault occurred in private settings such as houses, these were not reported with the same frequency within the sources consulted as public acts. Over the course of the period private sexual acts between men also became more likely to be prosecuted, not only public ones.⁸⁶ What’s more, there was an increasing willingness of the police to see the private sphere as a legitimate space to intervene in disputes.⁸⁷ On the other hand, it has been proposed that private consenting offences were *de facto* tolerated by the police.⁸⁸

In this period an act was not automatically termed public for taking place outside, but one that was witnessed by others.⁸⁹ Furthermore, public order was subject to increasing scrutiny

⁸⁵ Joanne Bailey, “‘I Dye [Sic] by Inches’: Locating Wife Beating in the Concept of a Privatization of Marriage and Violence in Eighteenth-Century England”, *Social History* 31, no. 3 (2006): 273–94.

⁸⁶ Cocks, *Nameless Offences*, 18.

⁸⁷ When concerning marital violence, for example, see Elizabeth Foyster, *Marital Violence: An English Family History, 1660–1857* (Cambridge: Cambridge University Press, 2005), 211–33.

⁸⁸ Cocks, *Nameless Offences*, 51; Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861–1913* (Basingstoke: Palgrave Macmillan, 2005), 102; Upchurch, *Before Wilde*, 163; See also Jeffrey Merrick, ‘New Sources and Questions for Research on Sexual Relations between Men in Eighteenth-Century France’, *Gender & History* 30, no. 1 (2018): 9, for the same argument about sodomites in Paris.

⁸⁹ Michal Shapira, ‘Indecently Exposed: The Male Body and Vagrancy in Metropolitan London before the Fin de Siècle’, *Gender & History* 30, no. 1 (2018): 63; See also Bailey, “‘I Dye [Sic] by Inches’”, who demonstrates the same in the context of marital violence.

from the end of the eighteenth century as reformers attempted to clean up the streets.⁹⁰ Indeed, policing centred overwhelming on public spaces.⁹¹ When concerning sexual relations between men, most early to mid-nineteenth century arrests reported in the press centred on these spaces.⁹² Research has uncovered a diverse range of public locations, which were given in eighty-five percent of cases that disclosed a location. These include spaces connected with male homosexuality, such as streets, parks, and urinals. However, they also contain sites which had few specific connections to sex between men, such as bridges, coaches, houses, lodging houses, and train carriages. While these have been collected little in comparison, they demonstrate that men experienced sexual violence in a range of locations across the capital.

Sexual assault as the primary driver of a prosecution

When a sexual assault was the primary driver of a prosecution, where were they reported to have been committed? The streets of London contained the highest proportion of sexual assaults – just over a third of cases which stated a location (34%). These ranged across the metropolis, from the fashionable West End to the poorer eastern part, plus the financial square mile of the City, which can be seen in a map showing clusters where instances of male on male sexual assault occurred for all types of case and location (Appendix B).

Urban space in this period was dominated by pedestrians.⁹³ At the beginning of the period of study many streets were dirty and unpaved, but improvements meant that walking became easier.⁹⁴ However, these focused in the west of London, where streets became wider and more regular, while in the east they often remained narrow and uneven. Moreover, these developments increased people's movement while at the same time providing a social space for visual display and consumption.⁹⁵ Indeed, the streets were busy

⁹⁰ Cocks, *Nameless Offences*, 56.

⁹¹ Helen Johnston, *Crime in England 1815-1880: Experiencing the Criminal Justice System* (Oxon: Routledge, 2015), 49–50.

⁹² Upchurch, *Before Wilde*, 160; Cocks, *Nameless Offences*, 37.

⁹³ Colin Pooley, 'Walking Spaces: Changing Pedestrian Practices in Britain since c. 1850', *The Journal of Transport History*, 2020, 6.

⁹⁴ Peter McNeil and Giorgio Riello, 'The Art and Science of Walking: Gender, Space, and the Fashionable Body in the Long Eighteenth Century', *Fashion Theory* 9, no. 2 (2005): 179.

⁹⁵ Jane Rendell, 'Displaying Sexuality: Gendered Identities and the Early Nineteenth-Century Street', in *Images of the Street: Planning, Identity and Control in Public Space*, ed. Nicholas R. Fyfe (London: Routledge, 1998), 76–77.

in this period, with aggressive behaviour such as pushing and bustling common.⁹⁶ They were certainly noisy.⁹⁷ Furthermore, street walkers were not necessarily anonymous or passive, but actively participated in the bustle and rowdiness of the crowds.⁹⁸ Corfield has shown that street walking was not only an essential mode of transport for inhabitants and visitors to the capital, but also a form of both entertainment and risk.⁹⁹ Walkowitz has demonstrated how the streets were presented as a site of sexual danger for women, fuelled by the media.¹⁰⁰ Was there an element of sexual danger for men when walking the streets too? They certainly dominated them, with most pedestrians walking alone.¹⁰¹

The large area known as the West End contained the greatest proportion of sexual assaults, as can be seen in Appendix B. This period saw the creation of public spaces in the West End, where people could derive pleasure from walking, shopping, entertainment, and nightlife.¹⁰² One of the districts appearing most frequently was Marylebone, corresponding with Upchurch's finding that most cases of male homosexuality appeared at the magistrate court there.¹⁰³ Indeed, it was known to be a neighbourhood for seeking out homosexual sex.¹⁰⁴ Furthermore, Marylebone had a large population, containing more inhabitants in the mid nineteenth century than many large English towns such as Bristol and Bradford.¹⁰⁵ Two policemen were sexually assaulted in Harley Street fourteen years apart, one of the few streets to be mentioned more than once.¹⁰⁶ It was in the wealthier parts of London that sex

⁹⁶ Peter K. Andersson, "'Bustling, Crowding, and Pushing": Pickpockets and the Nineteenth-Century Street Crowd', *Urban History* 41, no. 2 (2014): 304–5; see also Ava Arndt, 'Touching London: Contact, Sensibility and the City', in *The City and the Senses: Urban Culture Since 1500*, ed. Alexander Cowan and Jill Steward (Aldershot: Ashgate, 2007), 95–104, for the shift from perceiving the city in visual to tactile terms in writings of the eighteenth century.

⁹⁷ James Winter, *London's Teeming Streets: 1830-1914* (Oxon: Routledge, 1993), 65–79.

⁹⁸ Peter K. Andersson, *Streetlife in Late Victorian London: The Constable and the Crowd* (Basingstoke: Palgrave Macmillan, 2013), 218.

⁹⁹ Penelope J. Corfield, 'Walking the City Streets: The Urban Odyssey in Eighteenth-Century England', *Journal of Urban History* 16, no. 2 (1990): 152.

¹⁰⁰ Judith R. Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1992).

¹⁰¹ Colin Pooley, 'On the Street in Nineteenth-Century London', *Urban History*, 2019, 5.

¹⁰² Rohan McWilliam, *London's West End: Creating the Pleasure District, 1800–1914* (Oxford: Oxford University Press, 2020).

¹⁰³ Upchurch, *Before Wilde*, 173.

¹⁰⁴ Matt Cook, *London and the Culture of Homosexuality, 1885-1914* (Cambridge: Cambridge University Press, 2003), 13.

¹⁰⁵ Schwarz, 'London 1700-1840', 647.

¹⁰⁶ *The Times*, 15 May 1833; *Morning Post*, 30 November 1847.

between men was most heavily policed, making these assaults on policemen in Marylebone unsurprising.¹⁰⁷

Elsewhere, the more 'respectable' districts of Mayfair and St James's were referenced often. The latter was an ostensibly male space of public activity, containing tailors, hatters, barbers, in addition to coffee houses and clubs exclusively for men.¹⁰⁸ Here, a man caught hold of soldier John Barham's private parts in 1835 by the Duke of York's monument in Carlton Terrace, which was only raised in the years preceding.¹⁰⁹ Multiple other areas of the West End have been found as sites of sexual assault, including Oxford Street and Regent Street, to name a few (see Appendix B).¹¹⁰ As such, sexual violence between men can be said to have been committed across the West End entertainment districts and centres of nightlife, rather than contained in only specific areas. As a wealthy, fashionable, commercial, and well-policed area, is it unsurprising that most sexual assaults prosecuted took place here.

Moving East, three assaults were collected in Tower Hamlets and were variously reported in the newspapers of study. For instance, one report concerned an indecent assault alleged by a soldier stationed outside the Tower of London, with the perpetrator arguing that he tripped and fell into the soldier. The reports of this case were long, included cross examination from both sides and centred on whether the touching was accidental or purposeful.¹¹¹ Nearby Tower Hill was the site for a separate sexual assault seventeen years later of an Irish labourer by an elderly man. It was a popular case reported by all newspapers of study for several reasons, including the participants' difference in age and monetary circumstances, the nationality of the prosecutor (Irish), the alleged 'eccentricity' of the perpetrator, and the ineffectiveness of the police.¹¹² Despite only a marginal proportion of assaults uncovered in east London, they contain some interesting prosecutions which were covered by several newspapers. Furthermore, these cases show

¹⁰⁷ Upchurch, *Before Wilde*, 172.

¹⁰⁸ Rendell, 'Displaying Sexuality', 78–80.

¹⁰⁹ LMA, information of John Barham and Henry Elund, 26 June 1835 (MJ/SP/1835/06/022).

¹¹⁰ LMA, information of William Henry Waite and Joseph Usher, 10 July 1826 (MJ/SP/1826/09/138); *The Times*, 4 January 1833.

¹¹¹ *The Times*, 11 July 1842. See also 15 July 1842; *Morning Post*, 11 July 1842.

¹¹² *Morning Post*, 18 January 1859; *Morning Chronicle*, 18 January 1859; 19 January 1859; 22 January 1859; *The Times*, 19 January 1859; 22 January 1859; *Lloyd's Weekly Newspaper*, 23 January 1859; *Reynolds's Weekly Newspaper*, 23 January 1859.

the range of spaces where male on male sexual violence occurred, which included the poorer, largely working class, part of London.

Similarly, relatively few instances of sexual violence have been found to have been committed on the streets of the City of London, perhaps unsurprisingly given the smaller area it encompassed. It was not until the latter half of the nineteenth century that the City acquired the characteristics of a business district, though its residential function was undermined over time due to a gradual exodus of the local populace.¹¹³ Prosecutions do show a spread across the square mile, and across the entire period. For example, Samuel Drayton was accosted and sexually assaulted in Clement's Lane, though the report lacks much detail.¹¹⁴

Other streets not included above include Hampstead Road, Gray's Inn Lane, Bromley, Knightsbridge, and Fulham-road, for example (see Appendix B). Most assaults occurred in the West End, with comparatively few in the East End and City of London, due to the former's lack of policing and latter's smaller size. While sexual assaults did take place in streets across the capital, they certainly clustered in the commercialised West.

After the streets, parks appeared as the most frequent site of sexual assault between men when it was the primary driver of a prosecution, comprising 14% of cases which stated a location. They were popular and many were enjoyed by all, though some contained entrance fees which preserved some class discrimination.¹¹⁵ As large, and dark spaces at night, they contained a degree of anonymity. Indeed, 'it was at night, when the crowds thinned, the darkness cloaked men's movements and the risk of surveillance abated, that the parks fully came alive'. For these reasons they were prominent locations for men seeking sex with men in the eighteenth and nineteenth centuries, and beyond.¹¹⁶ However, they also meant that one could be silently observed. Upchurch notes that parks 'provided an anonymous meeting place, but not necessarily a private or safe one'.¹¹⁷ As can be seen in Appendix B, multiple parks have been revealed.

¹¹³ Schwarz, 'London 1700-1840', 648.

¹¹⁴ *Morning Post*, 26 July 1844.

¹¹⁵ Corfield, 'Walking the City Streets', 136.

¹¹⁶ Matt Houlbrook, *Queer London: Perils and Pleasures in the Sexual Metropolis, 1918-1957* (Chicago: Chicago University Press, 2005), 53.

¹¹⁷ Upchurch, *Before Wilde*, 66.

Eight sexual assaults have been uncovered in Hyde Park alone, with all but one in the nineteenth century. This park was found by Cocks to have contained the majority of homosexual offences, consensual or otherwise.¹¹⁸ As with other public assaults, most reports stated men were accosted while walking or looking around, followed by a sexual assault. For example, Thomas Gill was talking to a stranger in the Park before being indecently assaulted by him.¹¹⁹ Hyde Park continued to be a space for sexual liaisons and assaults between men throughout the rest of the century and beyond.¹²⁰ Also represented prominently is St James's Park. Six sexual assaults have been uncovered, with a potential further one added from reports which simply state 'the Park', which is perhaps likely to be St James's due to its status one of the oldest parks in London. This is an early issue of *The Times* and detailed a sexual assault on a soldier in the late eighteenth century.¹²¹ As will be seen below, this Park was reported at a higher proportion in secondary and tertiary prosecutions for theft offences.

While streets and parks were the most frequent locations for male to male sexual violence to occur in the primary category, at 34% and 14% of assaults which gave a location, other public spaces also contained numerous instances of sexual assault (7%). For instance, locations described as yards were the site of four sexual assaults across the period, such as an indecent assault by a forty-year old Tailor in the yard of a house near Cranbourne-Street, Covent Garden.¹²² One sexual assault was committed in Lincoln's Inn Fields, a historic cruising ground for men meeting for sex by the eighteenth century.¹²³ William Spence was found guilty of intent to commit an unnatural crime on John Forward there, and sentenced to stand in the pillory in the same spot.¹²⁴

Several sexual assaults occurred while men were browsing shop windows, specifically in 7% of cases with a location. These spaces were not quiet but busy, aggressive, and loud. Indeed, they were associated with obscenity and public disorder due to the displaying of indecent or

¹¹⁸ Cocks, *Nameless Offences*, 57.

¹¹⁹ *The Times*, 21 September 1846.

¹²⁰ Cook, *London and the Culture of Homosexuality*.

¹²¹ *The Times*, 8 January 1785.

¹²² *Morning Chronicle*, 9 January 1830.

¹²³ Cocks, *Nameless Offences*, 58.

¹²⁴ *Morning Post*, 23 February 1778.

morally ambiguous images.¹²⁵ Upchurch has found several sexual advances that took place outside print shop windows.¹²⁶ In the present research, eight assaults have been collected, all in the early to mid-nineteenth century. William Fletcher and Benjamin Colls both indicated that they were taken hold of in an indecent manner outside picture-shops in the Strand.¹²⁷ Indeed, these were especially noted as morally ambiguous for their displays due to their vicinity to Holywell Street, the centre of Britain's pornography trade.¹²⁸ One police constable – Thomas Tipper, mentioned above – was sexually assaulted by three different men outside two print shop windows within a few weeks of each other, demonstrating knowledge of the space outside shops as one of sexual contact between men.¹²⁹ Indeed, this was a space 'charged with sexual desire and sexual transgression', as Nead argues.¹³⁰

Six assaults (5%) occurred inside theatres around London, and all were reported in the newspapers. Cocks similarly found only 3% of homosexual offences took place in theatres, albeit with a smaller sample.¹³¹ Two men were assaulted in the cheap galleries of Covent Garden Theatre and a serjeant was the victim of a detestable offence in the two-shilling gallery.¹³² It was not only the cheaper seats however, as two men were indecently assaulted in the pit of the Adelphi Theatre.¹³³ Furthermore, an unnamed 'young man' was apparently assaulted in the third tier of boxes at Drury-lane Theatre. Despite being taken to the Court of King's Bench, it was only a short report stating that the perpetrator was found not guilty, with few other details.¹³⁴

Four assaults (3%) occurred in vehicles. Thomas Strange had indecently assaulted two police officers in a train carriage when it was around Stratford Station; he initially admitted the offence and paid a fine, but thereafter requested a retrial which was granted, though he

¹²⁵ Lynda Nead, *Victorian Babylon: People, Streets and Images in Nineteenth-Century London* (London: Yale University Press, 2000), 157–59.

¹²⁶ Upchurch, *Before Wilde*, 76.

¹²⁷ *OBP*, trial of William Fletcher and James Chittem, February 1841 (t18410201-645); trial of John Garner, December 1842 (t18421212-293); *Morning Post*, 8 December 1842.

¹²⁸ Cocks, *Nameless Offences*, 131.

¹²⁹ *LMA*, information of Thomas Tipper and John Smith, 18 April 1833 (MJ/SP/1833/05/003); information of Thomas Tipper et al, 3 May 1833 (MJ/SP/1833/05/016).

¹³⁰ Nead, *Victorian Babylon*, 187.

¹³¹ Cocks, *Nameless Offences*, 29.

¹³² *Morning Post*, 12 January 1815.

¹³³ *The Times*, 8 December 1842; 4 May 1848.

¹³⁴ *The Times*, 23 June 1836.

was still convicted.¹³⁵ There has been some research showing how women were assaulted on the railways, with one scholar noting how sexual violence enabled by the intimate settings of railway carriages was a fact of Victorian life that is often overlooked today.¹³⁶ Though few in number, these reports indicate that men were also assaulted on public railways, with the potential for more occurring in the latter third of the nineteenth century. Another vehicle uncovered was a docked steamer, in a case which opened the present thesis.¹³⁷

A much smaller seventeen percent of cases were committed in private or semi-private locations, such as houses, lodging houses, or places of confinement. While these have been collected much less than public assaults, they still show variability in the type of location where they occurred. Furthermore, several demonstrate the normality of men sharing beds, even with strangers.¹³⁸ However, they also show the potential danger of doing so.

It was the house of the perpetrator which appeared most as the site for a sexual assault in a private location (9%). For instance, John Cook accepted a stranger's bed after being locked out of his lodgings, and John Summerson did the same as he apparently did not wish to disturb his housemates when coming home late at night. Both were sexually assaulted after being asleep for some time.¹³⁹ Remarkably, two instances of male on male sexual violence were committed by servants in the same house – Dudley House, Park Lane – more than half a century apart. A porter was charged with 'intent to commit an unnatural offence' after inviting a soldier inside in 1793, and a policeman was potentially drugged and sexually assaulted there in 1850, both reported in *The Times*.¹⁴⁰

These cases show the variability in familiarity between victim and perpetrator, which can also be seen when the site of assault was the victim's lodgings, which has been collected in only a couple of cases. Robert Graham accepted the request of a man he had been drinking

¹³⁵ *The Times*, 12 June 1856; *Lloyd's Weekly Newspaper*, 15 June 1856.

¹³⁶ Robin J. Barrow, 'Rape on the Railway: Women, Safety, and Moral Panic in Victorian Newspapers', *Journal of Victorian Culture* 20, no. 3 (2015): 341.

¹³⁷ *The Times*, 30 October 1838.

¹³⁸ See *OBP*, trial of Roger Sweetman, September 1785 (t17850914-164); *The Times*, 5 April 1793.

¹³⁹ *LMA*, information of Andrew Brockley et al, 7 September 1827 (MJ/SP/1827/09/106); information of John Summerson, 13 September 1831 (MJ/SP/1831/09/014).

¹⁴⁰ *The Times*, 5 April 1793; 6 July 1850.

with one night for a space in his bed; the man later sexually touched him multiple times.¹⁴¹ Thomas Glover accepted the same from a man belonging to the same friendship association as him; the man sexually assaulted Glover after being in bed for some time.¹⁴² Overall, the house or workplace of the defendant was the location for male to male sexual assault much more frequently than the prosecutor, suggesting that the former had been looking for sex. Furthermore, these cases show changeability in the degree of familiarity between the two, from strangers to men who had known each other for years.

The sharing of beds was also frequent in another 'private' location: lodging houses. By the nineteenth century they were well-established as a working-class dwelling, and underwent growth due to the increase of mobile, migrant labour, brought forward primarily due to immigration and urban industrialisation.¹⁴³ Moreover, lodgers were most likely to be young male labourers between the ages of fifteen and thirty-four.¹⁴⁴ This makes them an ideal space to study male to male sexual violence, though research only uncovered a relatively small number of cases, all with a sexual assault as the primary driver of a prosecution – just five (4%). All came from the court records, mostly examinations of the Middlesex Sessions.

It is clear from the narratives of victims that forced penetration was a more common occurrence in lodging houses than elsewhere due to the presence of beds, and a certain element of privacy. The earliest assault uncovered (1761) took place in a lodging house called the Fortune of War, and concerned a forced penetration committed by the victualler of the establishment.¹⁴⁵ In 1833, Robert Jervins woke to find a man 'trying as much as he could to get my Thighs open', when staying at Mr Atkinson's, in Orchard Street,

¹⁴¹ LMA, information of Robert Graham and Thomas Henderson, 17 September 1827 (MJ/SP/1827/09/146).

¹⁴² LMA, information of Thomas Glover et al, 29 February 1828 (MJ/SP/1828/04/054).

¹⁴³ Liz Woolley, "'Disreputable Housing in a Disreputable Parish'? Common Lodging-Houses in St Thomas', Oxford, 1841–1901', *Midland History* 35, no. 2 (2010): 215; M. Glazier, 'Common Lodging Houses in Chester, 1841–71', in *Victorian Chester: Essays in Social History, 1830-1900* (Liverpool: Liverpool University Press, 1996).

¹⁴⁴ Woolley, "'Disreputable Housing in a Disreputable Parish'?"; Jane Hamlett, *At Home in the Institution: Material Life in Asylums, Lodging Houses and Schools in Victorian and Edwardian England* (Basingstoke: Palgrave Macmillan, 2015), 126; Vicky Holmes, 'Accommodating the Lodger: The Domestic Arrangements of Lodgers in Working-Class Dwellings in a Victorian Provincial Town', *Journal of Victorian Culture* 19, no. 3 (2014): 319.

¹⁴⁵ OBP, trial of Thomas Andrews, May 1761 (t17610506-23). See above, 136.

Westminster. A witness had refused the man getting in his bed earlier that night, indicating this was shared accommodation in the same room.¹⁴⁶

Lodging Houses were associated with crime and seen as violent, and thought to harbour disease and foster criminality.¹⁴⁷ Indeed, separate reports by police commissioners stated they were 'hotbeds' of crime, though neither pointed specifically to sexual assaults between men.¹⁴⁸ During the nineteenth century they were subject to increasing regulation. The Vagrancy Act (1824) empowered magistrates to conduct inspections searching for criminals, though this power was apparently seldom used.¹⁴⁹ It was not until the early 1850s that legislation targeted lodging houses specifically, especially regarding sanitation and the health of lodgers.¹⁵⁰ Another was sleeping arrangements, with instructions for the separation of the sexes and married couples, though it was not until after the period of study when concern about single men sharing beds with other men can be found in police regulations.¹⁵¹ However, these few cases show that men were sexually assaulted in lodging houses.

Also found as a site of male on male sexual violence is the workhouse, again a largely working-class institution. Discipline was more difficult in workhouses than other institutions such as asylums due to constantly changing populations.¹⁵² In general, most offences committed inside the workhouse were for non-serious but persistent offences, with relatively few assaults.¹⁵³ Bed sharing was common in workhouse sleeping arrangements

¹⁴⁶ LMA, information of Robert Jervins et al, 18 May 1833 (MJ/SP/1833/05/051).

¹⁴⁷ Hamlett, *At Home in the Institution*: 112; Crook, 'Accommodating the Outcast', 426; Woolley, "'Disreputable Housing in a Disreputable Parish'?", 230.

¹⁴⁸ Copy of a Report made to the Secretary of State for the Home Department by Captain Hay, one of the Commissioners of the Metropolitan Police, on the operation of the Common Lodging-House Act (1853), *House of Commons Parliamentary Papers*, 1; Report to Her Majesty's Principal Secretary of State for the Home Department, by the Assistant Commissioner of the Metropolitan Police, upon the operation of the Common Lodging Houses Acts, 14 & 15 Vict. c. 23. and 16 & 17 Vict. c. 41. within the Metropolitan Police district (1857), *House of Commons Parliamentary Papers*, 2.

¹⁴⁹ Lionel Rose, *'Rogues and Vagabonds': Vagrant Underworld in Britain 1815–1985* (London: Routledge, 1988), 4, 13.

¹⁵⁰ *Common Lodging Houses Act*, 14 Vict (1851); 16 Vict (1853).

¹⁵¹ Hamlett, *At Home in the Institution*, 116.

¹⁵² M.A. Crowther, *The Workhouse System, 1834–1929: The History of an English Social Institution* (London: Methuen & Co, 1983), 208.

¹⁵³ David R. Green, 'Pauper Protests: Power and Resistance in Early Nineteenth-Century London Workhouses', *Social History* 31, no. 2 (2006): 137–59.

and contained limited privacy.¹⁵⁴ Indeed, sleeping wards were not meant to be locked.¹⁵⁵ Despite a lack of privacy, shared beds, especially with strangers, made sexual assaults possible, though this also meant they could be witnessed. Recent research by Williams has uncovered local variations in offences committed, including a minority of indecent offences, however these were not explored in detail.¹⁵⁶ Koven detected an interest in workhouse homosexual activity in James Greenwood's 'A Night in a Workhouse' (1866), activity that was subsequently ignored by officials, reformers, and activists.¹⁵⁷ In the present thesis three sexual assaults have been uncovered, only 3% of the total primary cases, and were committed in separate workhouses around the capital.

The earliest collected was from the late eighteenth century and was a series of forceful penetrations by John Cole against an inmate of Hendon Workhouse, which were overheard by two men in the same room, providing witness testimony for the case.¹⁵⁸ Another forced penetration was also committed just over a mile away in Saint Marylebone Workhouse, though forty years later, with Henry Godbold deposing that a man violently assaulted him in the corner of a common area. Two witnesses saw Godbold with his trousers down.¹⁵⁹ The final case occurred on the other side of London in the East End, five miles away, in Bethnall Green Workhouse. In George Peterson's examination the sentence 'The Prisoner slept in the same bed with me' is underlined before he detailed a sexual assault committed on him. This was not overheard by other inmates, though there is a statement by the master of the workhouse on the size of the beds, and the sleeping arrangements of men therein. He was presumably doing this to cover himself from accusations of inadequate sleeping arrangements.¹⁶⁰ What can be seen from these assaults is the greater likelihood of forced penetration occurring compared to public locations. Furthermore, there was a higher

¹⁵⁴ Joseph Harley, 'Material Lives of the Poor and Their Strategic Use of the Workhouse during the Final Decades of the English Old Poor Law', *Continuity and Change* 30, no. 1 (2015): 71–103.

¹⁵⁵ Green, 'Pauper Protests', 153.

¹⁵⁶ Samantha Williams, 'Paupers Behaving Badly: Punishment in the Victorian Workhouse', *Journal of British Studies* 59, no. 4 (2020): 764–92.

¹⁵⁷ Seth Koven, *Slumming: Sexual and Social Politics in Victorian London* (Princeton: Princeton University Press, 2004), 27–74.

¹⁵⁸ LMA, information of Richard Harris et al, 17 February 1786 (OB/SP/1786/02/019); OBP, trial of John Cole, February 1786 (t17860222-129); TNA, Newgate Prison Calendar, 22 February 1786 (HO77/1/370).

¹⁵⁹ LMA, information of Henry Godbold et al, 23 December 1826 (MJ/SP/1827/01/074).

¹⁶⁰ LMA, information of George Peterson et al, 17 October 1831 (MJ/SP/1831/10/009).

chance of witnesses being present, which presumably contributed to guilty verdicts in all cases of sexual violence in workhouses.

Uniquely, two assaults have been collected that were committed in debtor's prison and lockup cells, 2% of cases found with a location. Specific evidence of sexual violence in these settings, especially between men, is scarce in the sources consulted. *The Times* reported in the early 1840s that a sexual assault had occurred between debtors in Queen's Bench Prison; upon being witnessed, the perpetrator was dragged out and beaten, with other prisoners wanting to inflict 'summary vengeance' by putting his head into a water closet. The perpetrator denied the assault and outlined a conspiracy against him, and that his trousers had been torn to add effect.¹⁶¹ Another assault was reported ten years later by the *Morning Post*, under the headline 'Serious Charge Against a Presbyterian Minister'; James Caldwell had apparently indecently assaulted several men on the street, for which he was arrested and placed in a cell. According to a man in the same cell, Caldwell 'took certain liberties with him of a very indecent character'.¹⁶²

When a sexual assault was the primary driver of a prosecution, most were reported to have occurred in the streets of the West End, with the East End and the City less frequently mentioned. Multiple parks were the site of assault, as well as a diverse range of other locations, such as shop windows and multiple private spaces. How did this compare to other types of prosecutions?

Secondary cases of sexual assault

When a sexual assault was the secondary driver of a case, a location was not stated in one. Of the eight that remain, the largest proportion reported were the streets (50%), as in the above. However, while the West End clustered in primary cases, all robberies and assaults in secondary cases occurred in different areas. Michael Oliver prosecuted a servant who sexually touched and robbed him in Drury Lane, and William Williams was convicted of doing the same in the East End district of Hackney.¹⁶³ An area which did not see any primary

¹⁶¹ *The Times*, 10 September 1841.

¹⁶² *Morning Post*, 16 July 1851.

¹⁶³ *OBP*, trial of William Jones, March 1800 (t18000528-128); trial of William Williams, October 1770 (t17701024-56).

cases was Holborn, an important space as it linked the commercial West End with the banking district of the City of London.¹⁶⁴ Ralph Hodson was assaulted and robbed in Middle-Temple Lane, which the perpetrator was executed for.¹⁶⁵ The City of London contained the other case, with Phillip Davis also convicted.¹⁶⁶ Although only a small amount of cases, the streets where men were both robbed and sexually assaulted ranged across the metropolis.

Of the other locations, parks were the next most frequently reported (25%), specifically one assault in Hyde Park and the other in St James's Park. The latter was a space not only associated with male homosexuality, as has been detailed, but also blackmail. This is discussed in greater detail below in reference to tertiary cases, along with public urinals, where another secondary case occurred (12.5%). The final was committed outside a print shop window in the Strand, between Southampton-street and Exeter-street (12.5%).¹⁶⁷ Shop windows were also associated with extortionists, where the 'casual brush of bodies' could be either a sign of sexual interest or pretext for an accusation of indecent assault.¹⁶⁸

Although the number of prosecutors both sexually assaulted and robbed were few, the locations they stated roughly followed the proportions when a sexual assault was the primary driver of a prosecution, specifically, the streets and parks. However, the streets ranged across the capital rather than cluster in a specific area. Furthermore, this evidence hints at other locations which, it is suggested next, were apparent spaces of robbery and extortion.

Tertiary prosecutions of sexual violence

Unlike in both primary and secondary cases, the most reported location in tertiary prosecutions were parks (29%). Furthermore, in contrast to primary cases, the Park featured most frequently was St James's Park. When occupations were given, only one man was not a soldier. Cocks notes that soldiers stationed in parks on duty as sentries were famously 'not above extortion and blackmail'.¹⁶⁹ This certainly appears to ring true for assaults found for St

¹⁶⁴ Nead, *Victorian Babylon*, 49.

¹⁶⁵ *OBP*, trial of James Brown, otherwise James Smith, September 1763 (t17630914-52).

¹⁶⁶ *OBP*, trial of Phillip Davis, October 1792 (t17921031-33).

¹⁶⁷ *Morning Post*, 8 December 1842.

¹⁶⁸ Cocks, *Nameless Offences*, 131.

¹⁶⁹ Cocks, 58.

James's, with soldiers not afraid to defend themselves in court by alleging that a sexual assault had been committed on them in the Park. For instance, Thomas Hayes robbed a man near the Pagoda Bridge and claimed sexual assault in his defence.¹⁷⁰

Hyde Park was only joint second highest, such as in one case that included the robbery of a grocer by twenty-year old George Webb.¹⁷¹ Uniquely, several other parks only appeared in tertiary cases of sexual assault (see Appendix B). For example, four have been collected for Green Park, three of which were charges of highway robbery, with two alleged against men of high class – Sir John Buchannan Riddle and Robert Johnson Parker, esquire.¹⁷² However, this is a relatively low proportion and is in contrast to Cocks, who found it to be a space of high concentration for sexual connections between men in his study.¹⁷³ Furthermore, the low number of assaults collected is more surprising considering that Green Park was one of only two parks open to all for the entire period of study without respect to class or money, the other being Hyde Park.¹⁷⁴ On the other hand, it appears to have been reported as a space for robbery and extortion, as it did not appear in primary or even secondary cases of sexual assault. The early nineteenth century also saw the construction of Regent's Park, completed in the 1820s, and further north than other Royal Parks. Two men swore assaults against each other near number 12, Cornwall-Terrace, on the edges of the Park.¹⁷⁵ It was initially a private park also only for the suitably dressed, but opened to all in stages in the 1830s, and fully accessible by the end of the decade.¹⁷⁶ Also appearing once was Kensington Gardens, only available to those properly dressed, though this was of course subjective.¹⁷⁷ However, in the late eighteenth century William Pretty was robbed by a man who alleged a sexual assault against him when walking through the Gardens in the morning.¹⁷⁸

¹⁷⁰ *OBP*, trial of Thomas Hayes, June 1818 (t18180617-4).

¹⁷¹ *OBP*, trial of George Webb, August 1846 (t18460817-1636).

¹⁷² *OBP*, trial of Thomas Davis, July 1797 (t17970712-55); trial of George Manners, September 1815 (t18150913-60).

¹⁷³ Cocks, *Nameless Offences*, 57.

¹⁷⁴ Henry W. Lawrence, 'The Greening of the Squares of London: Transformation of Urban Landscapes and Ideals', *Annals of the Association of American Geographers* 83, no. 1 (1993): 111.

¹⁷⁵ *OBP*, trial of John Aylett et al, December 1838 (t18381217-348).

¹⁷⁶ Lawrence, 'The Greening of the Squares of London', 111.

¹⁷⁷ *Ibid.*

¹⁷⁸ *OBP*, trial of John Clarke, John Pullen, and William Rooke, July 1774 (t17740706-60).

Hence, tertiary cases reported parks as the site of robberies more often than when a sexual assault was the primary driver of a prosecution, suggesting that several parks, especially St James's Park and Green Park, were spaces where men might be robbed and subsequently accused of sexual assault. The evidence indicates that defendants knew parks related to male homosexuality and were using accusations of sexual assault in their defence to sound more believable than if an assault occurred elsewhere. Moreover, the evidence shows how common features of parks – dark, open spaces – gave rise to both homosexual activity as well as robbery.

In contrast to other types of prosecutions, the streets of London were only the second highest reported location in tertiary cases (24%). Furthermore, there were distinct differences in the areas. For instance, while Marylebone and Covent Garden were highly featured in primary cases, they have been uncovered much less in tertiary cases. Conversely, the nearby area of Soho was reported on more frequently. For example, two men were prosecuted for extortion; a journeyman stone mason accused a man of sexual assault outside St. George's-barracks, Orange Street, and a lithographic printer accused another in Hemming's Row.¹⁷⁹

Proportionately more reports centred on the City of London and surrounding areas (see Appendix B). Gracechurch Street was one of the few to have been reported multiple times; James Farrow alleged that a sexual assault had been committed on him by an out-pensioner of Chelsea Hospital, though he was found guilty of extortion and imprisoned for twelve months.¹⁸⁰ Moreover, nearby Holborn was reported on multiple times, such as how Jeremiah Healy accused of a man of indecent liberties near Fleet Bridge.¹⁸¹ Hence, it appears that the City was more a space of theft and subsequent accusations of sexual assault than when a sexual assault was the primary driver of a prosecution.

Other public spaces were also sites of robberies (10%). For instance, James Donally was accosted and sexually assaulted by the honourable Charles Fielding when walking through

¹⁷⁹ *OBP*, trial of Edward Fox, July 1847 (t18470705-1654); trial of Joseph Braznell and John Wren, September 1850 (t18500916-1589).

¹⁸⁰ *OBP*, trial of James Farrow, December 1845 (t18451215-206).

¹⁸¹ *OBP*, trial of Jeremiah Healy, April 1822 (t18110403-95); for another case in Holborn, see *The Times*, 24 December 1847.

Soho Square, according to his defence for highway robbery.¹⁸² This case shows that accusations of such sexual contact between men were a possible feature of squares intended for the usage of the respectable.¹⁸³ Similarly, three assaults occurred in Moorfields, described by contemporaries as a notoriously immoral space, which contained an area known as the 'sodomite's walk' until the mid-eighteenth century.¹⁸⁴ Indeed, it has been characterised as an important place for men seeking sex with other men.¹⁸⁵ Three prosecutions appeared at the Old Bailey in the late eighteenth century for theft offences, with the defendants arguing that they were victims of sexual assault whilst there.¹⁸⁶

This is also suggested in the next most frequently collected location in tertiary cases: urinals (9%). Although several attempts were made to create public toilets in the nineteenth century, it was not until the latter end of the century when most were constructed. The first public toilets were essentially urinals for men, with most seemingly made around 1800.¹⁸⁷ They were a sex-segregated space with a degree of privacy and chances to approach other men.¹⁸⁸ Urinals were certainly known to be places of homosexual sex, as Cocks has found in trials in the decades following the end point of this thesis.¹⁸⁹ Furthermore, there were long standing associations between urinals and attempted blackmail based on real or imagined homosexual liaisons.¹⁹⁰

The cases collected here confirm this, with all occurring from the mid-1840s onwards, when the City of London had seventy-five urinals alone.¹⁹¹ The earliest case collected was exceptional insofar as it was referred to in later cases of sex between men. In this, George Middleditch, a soldier, had accused a seventy-year old officer of catching hold of his private parts in a water closet in Orange-street, for which he was being prosecuted and found guilty

¹⁸² *OBP*, trial of James Donally, otherwise Patrick Donally, February 1779 (t17790217-40).

¹⁸³ For more information on the history and creation of squares in London see Lawrence, 'The Greening of the Squares of London'.

¹⁸⁴ Cocks, *Nameless Offences*, 41.

¹⁸⁵ Rictor Norton, *Mother Clap's 'Molly' House: The Gay Subculture in England 1700-1830* (London: Gay Men's Press, 1992), 71–90.

¹⁸⁶ *OBP*, trial of William Statia, October 1781 (t17811017-20); trial of Edward Greenwood, December 1784 (t17841208-188); trial of William Thompson, May 1792 (t17920523-49).

¹⁸⁷ Lee Jackson, *Dirty Old London: The Victorian Fight Against Filth* (London: Yale University Press, 2014), 159.

¹⁸⁸ Upchurch, *Before Wilde*, 75–76.

¹⁸⁹ Cocks, *Nameless Offences*, 131–32.

¹⁹⁰ Jackson, *Dirty Old London*, 170.

¹⁹¹ Barbara Penner, 'The First Public Toilet?: Rose Street, Soho', *Victorian Review* 39, no. 1 (2013): 28.

of extortion.¹⁹² This case established that there was a difference in evidence required for threats of infamous crime and indecent assault. Perhaps its appearance and wide coverage made offences in water closets more likely to be reported.

Tertiary cases diverge from other types of prosecutions with most accusations of sexual assault in a defence stated to have occurred in parks, especially St James's Park and Green Park. Furthermore, the streets given appear to have been within or close to the City, rather than clustered in the West End. A range of other locations have been uncovered, especially those associated with male homosexuality, such as Moorfields and urinals. As such, this evidence suggests that certain spaces were used for accusations of sexual assault in a defence for another non-sexual offence to increase the plausibility of the claims made.

Analysis of the locations in reports containing male on male sexual violence in the late eighteenth and nineteenth centuries has shown that most assaults uncovered were public, with the streets predominating in primary and secondary cases. In the former, the West End featured more often than the East End or City of London, with more variability in the latter. In contrast, tertiary prosecutions mentioning the streets clustered in or surrounding the City, though more commonly reported were the royal parks, especially St James's Park. Other locations mentioned as spaces of sexual assault were shop windows, vehicles, theatres, and private locations such as houses, lodging houses, and workhouses. In tertiary prosecutions, reports tended to focus on spaces associated with male homosexuality, such as shop windows, certain fields, and urinals. Such reports demonstrate not only that men were in danger of being robbed and accused of sexual assault in these spaces, but also that defendants used them to increase the credibility of their allegations and absolve blame for another crime.

Across all types of prosecution, each type of location broadly matches Cocks' sample of 105 cases, with the streets at 31% (22% in Cocks), parks at 19% (20%), private locations at 15% (22%), with similar proportions for other, less frequently collected locations.¹⁹³ Where the samples differ is the variety of locations collected in the present thesis, with bridges, workhouses, debtors prison and lockup cells also found.

¹⁹² *OBP*, trial of George Middleditch, August 1844 (t18440819-1916).

¹⁹³ Cocks, *Nameless Offences*, 29.

Sexual practices did not simply take place within the city but were shaped by it.¹⁹⁴ As such, acts of sexual violence between men were committed and alleged largely in public spaces such as certain streets, parks, and even districts because they were frequent cruising grounds for homosexual sex. Indeed, what this section has primarily shown is the close association of sexual assault in spaces which contained long standing associations with male homosexuality, such as Marylebone, Hyde Park and St James's Park, Moorfields and Lincoln Inn Fields. Public spaces such as these, as well as urinals and print shop windows all continued to be popular locations for sexual activity between men.¹⁹⁵ Hence, this evidence suggests that while sexual assaults could happen anywhere, they tended to cluster around locations where men met up for sex. What's more, these locations were used by men who were prosecuted for non-sexual crimes to increase the credibility of their claims of sexual assault.

When did sexual assaults take place?

So far, this chapter has demonstrated that most instances of sexual violence between men were reported with varying degrees of visibility, with most taking place in public spaces. The following section will ask how visible these assaults were in terms of light, analysing the time of day, day of the week, and month when assaults were allegedly committed. Of course, this information was not always available. While some reports contained none of this detail, others might give a time, but not the day or month, or any other variation. In general, each category (time, day, month) lacked data ranging from a little above a quarter to slightly more than a third of cases. As such, although the following arguments cannot apply to every case collected, general patterns do appear.

This period underwent dramatic transformations in the illumination of outside spaces, especially the streets. By 1761, thousands of oil lamps were brightening the City of London, with plans forming to do the same in Westminster and adjoining parishes.¹⁹⁶ Towards the end of the eighteenth century improvements in technology resulted in glass chimneys and

¹⁹⁴ Frank Mort and Lynda Nead, 'Introduction: Sexual Geographies', *New Formations* 37 (1999): 2–9.

¹⁹⁵ Houlbrook, *Queer London*, 49–56.

¹⁹⁶ J. M. Beattie, *Policing and Punishment in London, 1660–1750: Urban Crime and the Limits of Terror* (Oxford: Oxford University Press, 2001), 221–22.

circular wicks being introduced.¹⁹⁷ However, it was the use of gas instead of oil which revolutionised street lighting, providing greater illumination at a reduced price. In the opening two decades of the nineteenth century a workable gas system was installed in the West End, used experimentally in Pall Mall, and Westminster Bridge was also lighted.¹⁹⁸ Over the course of nineteenth century, many areas of London became lit by gas lamps. This began with the main thoroughfares and places of congregation.¹⁹⁹ By 1823, there were 40,000 public gas lamps lighting 215 miles of the streets.²⁰⁰ Areas frequented by the middle and upper classes were prioritised.²⁰¹ Indeed, improvement in street lighting meant that people had the opportunity of walking the streets at night.²⁰² Of course, people could use their initiative and bring a source of illumination with them. Candles were still the primary source of light for most, with gas not being used by the middle classes in their homes until the 1840s.²⁰³

There are several reasons for the increasing usage of street lighting across London in the eighteenth and nineteenth centuries. Bauman notes the increase of night work and leisure time, retail outlets opening later, and competitiveness between districts on being the most lit.²⁰⁴ Briggs notes the perception of certain districts with vice, so better policing and lighting was needed.²⁰⁵ Indeed, perhaps the greatest anxiety came from crime, especially the threat of violent offences.²⁰⁶ As will be seen, the offences uncovered tended to occur when light had diminished the most.

Was male on male sexual violence reportedly more or less likely to be committed in certain months and seasons? The cases collected here show that, while some months have been collected more frequently than others, there is less variation than might be expected. A

¹⁹⁷ E. S. de Beer, 'The Early History of London Street-Lighting', *History* 25, no. 100 (1941): 312.

¹⁹⁸ Mark J. Bouman, 'Luxury and Control: The Urbanity of Street Lighting in Nineteenth-Century Cities', *Journal of Urban History* 14, no. 1 (1987): 12; Beer, 'The Early History of London Street-Lighting', 323; Nead, *Victorian Babylon*, 88.

¹⁹⁹ Corfield, 'Walking the City Streets', 249–52.

²⁰⁰ William T O'Dea, *The Social History of Lighting* (New York: Macmillan, 1958), 98.

²⁰¹ Bouman, 'Luxury and Control', 28.

²⁰² Rendell, 'Displaying Sexuality', 77.

²⁰³ Roger Fouquet and Peter J.G. Pearson, 'Seven Centuries of Energy Services: The Price and Use of Light in the United Kingdom', *The Energy Journal* 27, no. 1 (2006): 149.

²⁰⁴ Bouman, 'Luxury and Control', 12.

²⁰⁵ Asa Briggs, *Victorian Cities* (Harmondsworth: Penguin Books, 1987).

²⁰⁶ Beattie, *Policing and Punishment*, 216.

month was given in slightly under three quarters of reports and show that instances of sexual violence appear in the sources researched throughout the entire year. Unsurprisingly given the warmer temperatures and greater amount of light, the summer months contained the greatest proportion, making up slightly more than a third of all prosecutions. Breaking down by the type of prosecution shows only slight variation. July was the highest reported when a sexual assault was the primary driver of a case, June when it was secondary, and August when it was tertiary. Similarly low proportions of primary and tertiary cases were present when winter months were reported, with more secondary. Furthermore, only three assaults were committed on potential days off, all primary cases – Christmas Eve, Boxing Day, and New Year’s Eve – the rest were spread across the entire month, with more than half in the first week. There is little disparity between the other months; the lowest in both primary and tertiary cases were February and March, and April in secondary cases.

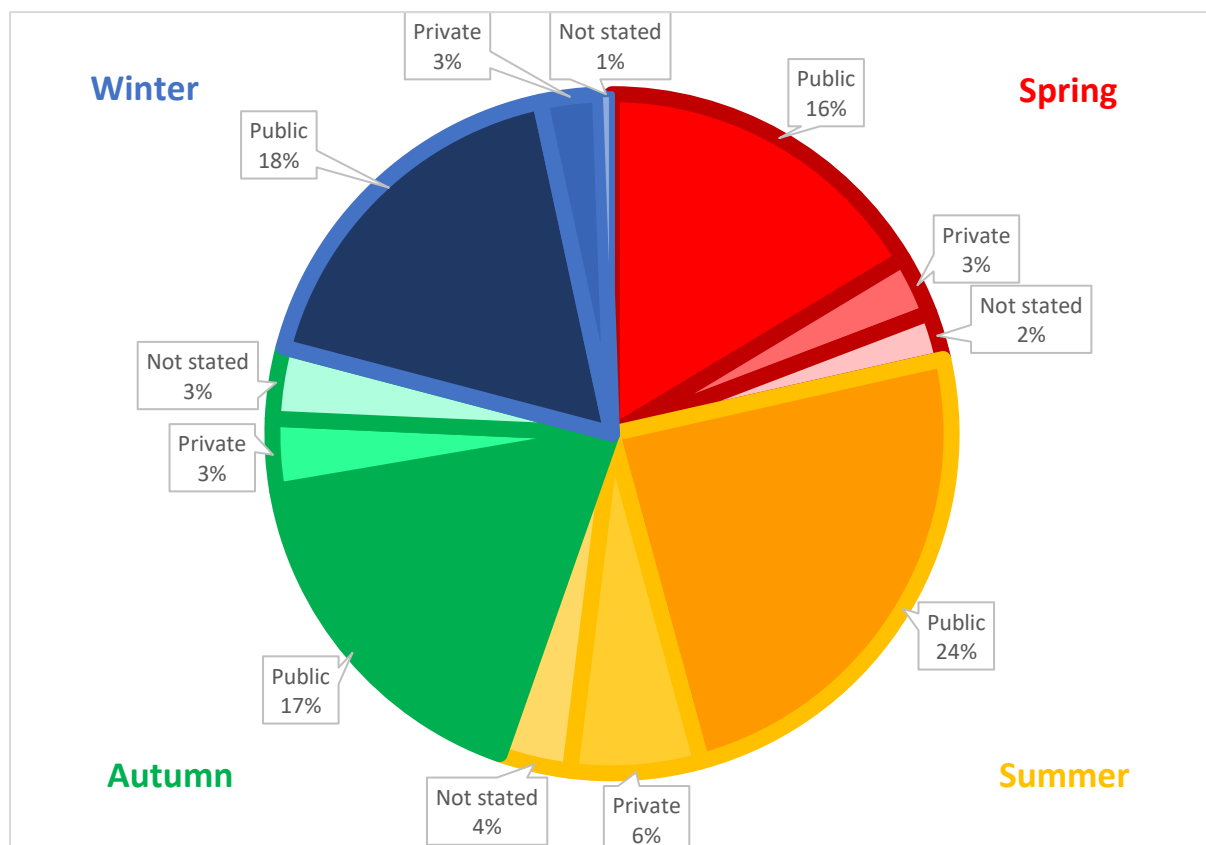


Figure 7 – All cases containing male on male sexual violence separated by season and type of location. Source: OBO (1761-1856); LMA, MJ/SP (1768-1836), OB/SP (1786), WJ/SP (1827); The Times, Morning Post, Morning Chronicle, Lloyd's Weekly Newspaper, Reynolds's Weekly Newspaper (1772-1860)

While it is predictable given the large proportion of sexual assaults committed in public that most occurred in the warmer and lighter summer months, the small discrepancy between the other seasons is somewhat surprising, especially considering how many were committed across December. The difference, however, is that slightly under half of these occurred inside rather than outside, much higher than any other month. Thus, although assaults and allegations of them were spread across the entire year, those committed in public were more likely in the summer months and private more so in the winter, but not to as great an extent as might be expected.

Also unexpected is the prevalence of assaults that were apparently committed during the week. A specific day was given in slightly more than two thirds of cases, with Figure 8 below showing the results. In primary cases, assaults committed on a Friday were slightly more common than on Tuesdays, with the reverse true for tertiary prosecutions. However, the disparities between them are few compared to secondary cases, with most committed on Saturday and Sunday. In other types of prosecution, the weekend days are in the middle range. Saturday was a working day for many, at least until the introduction of a half day for many occupations in the middle of the nineteenth century.²⁰⁷ Therefore, the cases uncovered where this data is present show a variability in the days when sexual assaults occurred by the type of prosecution, with the days relatively even in primary and tertiary cases, and weekends more frequent in secondary ones.

²⁰⁷ Hugh Cunningham, *Time, Work and Leisure Life Changes in England since 1700* (Manchester: Manchester University Press, 2014), 107.

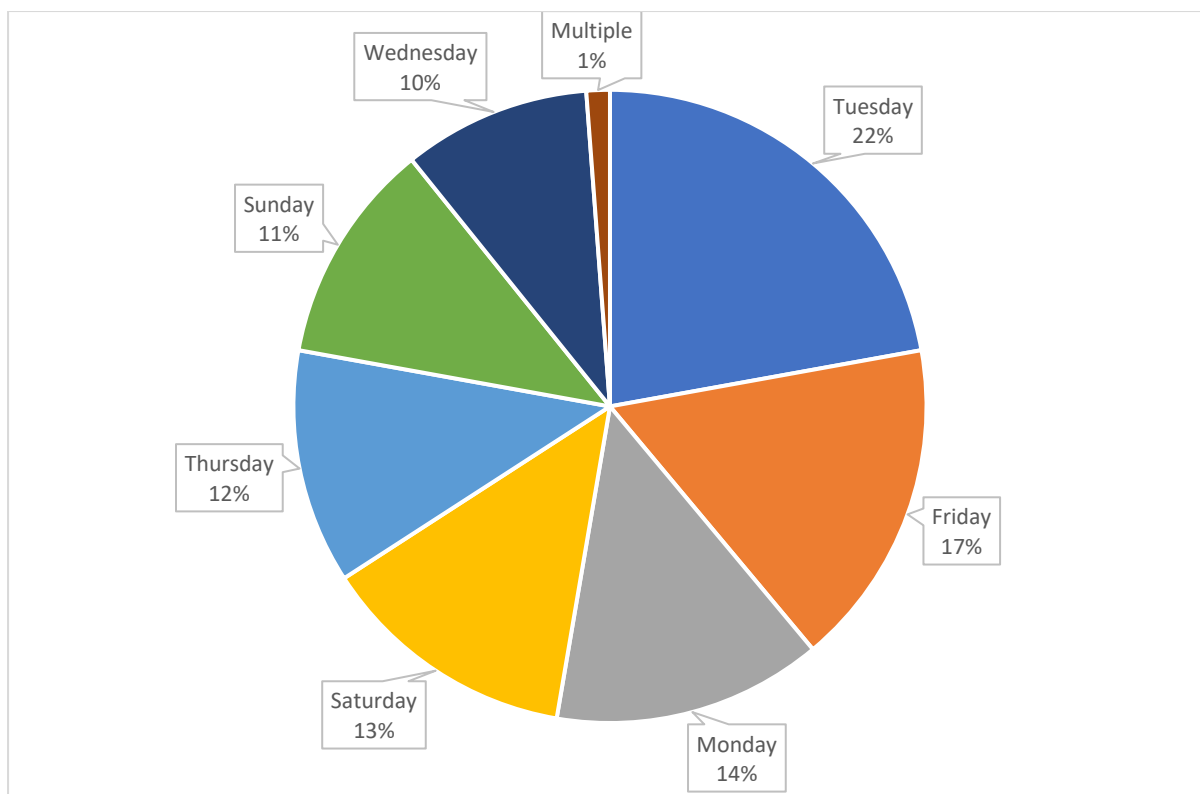


Figure 8 – All cases containing male on male sexual violence separated by day of the week. Source: OBO (1761-1856); LMA, MJ/SP (1768-1836), OB/SP (1786), WJ/SP (1827); *The Times*, *Morning Post*, *Morning Chronicle*, *Lloyd's Weekly Newspaper*, *Reynolds's Weekly Newspaper* (1772-1860)

Also important is the issue of light – at what times did sexual assaults allegedly occur, and how visible were they? A time of day was offered in sixty-one percent of cases, with newspapers less likely than the court records to indicate a time due to the amount of committal reports which did not contain witness testimony. Impressively, almost half of times stated were precise to the hour, such as 20.00 or 01.00. Around a quarter gave slots of an hour or so, such as between 22.00-23.00 or 02.00-03.00. The other quarter gave rough estimations such as ‘evening’ or ‘night’. Although these could denote a range of times, they also implicitly contain suggestions on the amount of light present at the time.

This analysis is structured by a journey from sunrise to sunset, through twilight and the night, and back to sunrise, using astronomical definitions for periods of time. These periods vary significantly depending on the month, with longer days in the summer meaning light was present for much longer than the winter. Each case was categorised by the time period when it occurred, data of which is available online back to 1600.²⁰⁸ Sunrise to midday is

²⁰⁸ These have been collected from *Timeanddate.com*, <https://www.timeanddate.com/sun/uk/london>, accessed 15 August 2019. Calculations are based on algorithms provided by the United States Naval

defined as morning, with midday to sunset as afternoon. Thereafter, three stages of twilight occur – civil twilight, nautical twilight, and astronomical twilight – each containing diminishing degrees of light and lasting for around 35-40 minutes. After twilight ends night begins, when the sky is dark and lit only by the moon or artificial light.

Extremely few sexual assaults were alleged to have occurred between sunrise and midday when there was the most amount of light outside. Indeed, low proportions were reported in primary and tertiary cases, and were completely absent from secondary ones. Specificity in a tertiary case was given by Thomas Williams in his defence for theft; he accused a man of ‘committing an unnatural crime’ on him in New Church-street between 04.25-05.00, which in the height of summer meant the sun was rising or had risen during these hours.²⁰⁹ Although the streets were somewhat quiet between three and four in the morning, by five they were busy.²¹⁰ Even fewer assaults have been categorised as happening in the afternoon, in the hours between midday and sunset. In the only secondary case, Benjamin Colls gave a time of 15.00 for an assault and robbery outside a shop window.²¹¹ On the whole, though, sexual assaults were least likely to have been committed in the afternoon than any other time.

Following sunset, the availability of light outside reduces significantly, and twilight begins. The first stage is termed civil twilight. While the sun had set, there is still light enough to see and do most activities. Indeed, the number of sexual assaults occurring during this period only increased slightly, though the times varied. The earliest was given by Henry Godbold, who was forcefully penetrated in an outside area of Saint Marylebone Workhouse at 16.30 in one of the few primary cases.²¹² Since this took place in December, the sun had already set and light was diminishing. A slightly higher proportion of assaults were alleged in other cases at this time, but during spring and summer, so contained similar amounts of light.

Observatory and National Aeronautics and Space Administration and are compared to past solar events such as Halley’s Eclipse (1715). Data is accurate at least after the adoption of the Gregorian Calendar by Britain in 1752, *private correspondence*, 15 August 2019.

²⁰⁹ *OBP*, trial of Thomas Williams, August 1850 (t18500819-1398).

²¹⁰ Corfield, ‘Walking the City Streets’, 144–45.

²¹¹ *Morning Post*, 8 December 1842.

²¹² *LMA*, information of Henry Godbold et al, 23 December 1826 (MJ/SP/1827/01/074).

A darker period begins thereafter, known as ‘nautical twilight’, when artificial light is usually required for most activities. In this period, there was again a small increase in the number of sexual assaults, though only in primary prosecutions, with low proportions in secondary and tertiary cases. The earliest in this period was committed on labourer Cornelius Gore at 17.30, who stated a man ‘put his hand to me private parts’ on the New Road in Marylebone.²¹³ While cases were still relatively low, this time zone saw the beginning of increasing numbers of sexual assaults reported in cases when it was the primary driver of a prosecution.

The final, and darkest period of twilight is known as ‘astronomical twilight’, and is, for the most part, nearly pitch black. As is to be expected, the proportion of sexual assaults alleged to have been committed during this time jumped significantly. Reports for this time period were similar in secondary cases, though much higher in primary and tertiary ones. Most common were the times of between 22.00-23.00, such as two in St James’s Park and two others in Orange-Street, all tertiary cases. Hence, this time period – close to pitch black – was more commonly given by men in their defence for another crime, compared to primary prosecutions for sexual assaults, which saw increases in both this time period and the last.

Night begins when twilight fades, and the sky is completely dark. Crime was most common at night.²¹⁴ Indeed, crimes multiplied due to the rising number of urban pedestrians during night-time in this period.²¹⁵ This is by far the most frequent period reported in cases containing male on male sexual assault, though highest in primary prosecutions over secondary and tertiary cases. In each type of case, around a fifth simply stated ‘night’, and one other only ‘a very late hour’.²¹⁶ Furthermore, all alleged after midnight happened on the streets, rather than in parks or elsewhere. In primary cases, four men precisely noted 00.45 for sexual assaults committed against them in locations such as the Duke of York’s Monument in Carlton Terrace, Harley Street, and Plummer Street.²¹⁷ Slightly later, between 01.00-02.00, was given by a clerk who had been sexually assaulted and robbed.²¹⁸ More

²¹³ LMA, information of Cornelius Gore et al, 22 January 1828 (MJ/SP/1828/02/052).

²¹⁴ Cunningham, *Time, Work and Leisure Life Changes*, 8.

²¹⁵ A. Roger Ekirch, *At Day’s Close: A History of Nighttime* (London: Phoenix, 2006), 32.

²¹⁶ OBP, trial of George Hyser George Ellison, May 1787 (t17870523-17).

²¹⁷ LMA, information of Thomas Cassidy, 12 August 1831 (MJ/SP/1831/09/031); information of John Barham and Henry Elund, 26 June 1835 (MJ/SP/1835/06/022); *The Times*, 13 May 1833.

²¹⁸ *Lloyd’s Weekly Newspaper*, 22 April 1849.

precise was Henry Bellamy Webb in a tertiary case, who stated a time of 01.30, when prosecuting a Sheriff's officer's assistant for robbery, who then accused him of sexual assault.²¹⁹ Not only did night-time contain the largest number of reported sexual assaults against men by far, it also contained the greatest variance in specific times, varying ten hours from 18.00-04.00 depending on the month. In this period leisure activities were almost 24 hours; for instance, there were no rules on opening times for public houses until the Licensing Act (1872).²²⁰

Our journey from sunrise to sunset and through night has shown that male to male sexual violence was reported to have increased as the day progressed, and light reduced. While cases uncovered indicate that few assaults took place during the morning and afternoon, after sunset and as the light began to diminish, assaults increased. Once it was over and night began, the likelihood of falling victim to a sexual assault – or accusing another man of one – amplified massively. Combining night and astronomical twilight, the darkest period of twilight, demonstrates high proportions across all types of case, primary (80%), secondary (63%), and tertiary (83%). There can be no doubt that the greatest threats to personal safety came during nightfall.²²¹ Indeed, most men in the late eighteenth and nineteenth centuries who were sexually assaulted were so in darkness, or accused others of doing so at this time.

What were the ages and social status of victims and perpetrators?

It has been established that typical instances of sexual violence were some sort of alleged sexual touching committed in a public space at night. What has been missing is specific information on the men involved, so this final section examines the victims and perpetrators through their ages and occupations. This analysis is not without its problems, specifically – once more – a distinct lack of detail on prosecutors and defendants in the sources. This can be seen more strongly when concerning ages than occupations, given in only a quarter of cases as opposed to three quarters. In order to uncover more information, additional sources from Findmypast and Ancestry have been consulted, mostly Newgate Prison

²¹⁹ *OBP*, trial of Thomas Addy, September 1842 (t18420919-2606).

²²⁰ Barry Anthony, *Murder, Mayhem and Music Hall: The Dark Side of Victorian London* (London: I. B. Tauris, 2015), 30.

²²¹ Ekirch, *At Day's Close*, 56.

Calendars and Criminal Registers.²²² This was partially successful and gave data in around a dozen or so cases, though also sometimes threw up another problem – discrepancies between the original reports and these other sources. Luckily, this was rare. Again, although lack of data for ages and occupations means that the following findings cannot apply in all cases, general patterns have been found.

Ages

Historians have often said little about the role of age in analysing homosexual acts.²²³ Part of this stems from the desire to distance queer people from paedophilia.²²⁴ Another is lack of information: in the sources researched, an age of the prosecutor and/or defendant is provided in only a quarter of cases. For example, while the *Proceedings* gave an age of participants in slightly more than half of prosecutions, only one examination of the *Middlesex* and *Westminster Sessions* stated an age of the prosecutor. Furthermore, the ages of defendants were provided more often than the prosecutors for sentencing purposes.²²⁵ In the newspapers less than a fifth supplied an age, with more than half of these reports containing guesswork by the reporter, such as ‘young’ or ‘elderly’. While the availability of ages increased over the course of the period of study, it did not do so significantly in the cases collected. Online databases increased this figure of a quarter by an additional five percent, although within these, seven documents provided a different age than original reports. While discrepancies and partial data mean that generalisations are risky, the information provided matches expected patterns.

When a sexual assault was the primary driver of a prosecution, the ages of prosecutors have rarely been uncovered. Of the ages that did appear, most reports simply said ‘young’. Similarly, the unspecific ‘about 18’ was reported in two prosecutions in the *Morning Chronicle*.²²⁶ However, of the ages that were given, the early twenties were the most

²²² See Chapter One, 33-35.

²²³ Kate Fisher and Jana Funke, ‘The Age of Attraction: Age, Gender and the History of Modern Male Homosexuality’, *Gender & History* 31, no. 2 (2019): 267.

²²⁴ Nicholas L. Syrett, ‘Introduction to “Sex across the Ages: Restoring Intergenerational Dynamics to Queer History”’, *Historical Reflections/Réflexions Historiques* 46, no. 1 (2020): 2.

²²⁵ John M. Beattie, *The First English Detectives: The Bow Street Runners and the Policing of London, 1750–1840* (New York: Oxford University Press, 2012), 214.

²²⁶ *Morning Chronicle*, 12 January 1829; 9 January 1830.

common clump of ages, with most aged twenty-three. Only one prosecutor was older, either forty-three or thirty-three, depending on the source.²²⁷ Despite a lack of data, the records suggest that most victims of sexual assault who subsequently attempted to punish it via the criminal justice system were young men in their twenties, who were more likely to be unattached and out in public spaces or lodging houses at night.

More information was available for defendants being prosecuted primarily for sexual assault. The youngest was between sixteen and seventeen, a clerk who indecently assaulted a watchman.²²⁸ Only five men were in their twenties, with more in their thirties, specifically twelve men with their ages either found from reports or other documents. The ages increase even higher, however. One report stated 'about forty', with the forties age group appearing four times. This number increased to six men found to be in their fifties, and another 'about 50', according to the *Morning Post*.²²⁹ What's more, three were given ages of sixty, another 'about sixty years', and another was sixty-five. The varied non-specific age groups given by newspapers also included 'middle-aged' (four times), 'elderly' and 'elderly man' (four times), 'advanced' (twice), 'old man' (once), and even 'an old infirm man' (once). Therefore, this evidence suggests that men who were being prosecuted for committing sexual assault were usually older than their prosecutors by several years or even a decade, and not uncommonly many decades older, suggesting they may have been seeking a sexual encounter.

Unfortunately, when a sexual assault was secondary in a prosecution, no information on the ages of prosecutors has been uncovered. On the other hand, the ages of defendants have been found in six cases, and they were relatively young. The youngest was nineteen, another twenty-three, and two were twenty-five. The ages of the others differ depending on the source. William Jones was either twenty-nine or twenty-six, and John M'Donnell older at either thirty or thirty-one.²³⁰ This age range matches most closely with the prosecutors in primary cases, rather than the defendants, though the numbers are small.

²²⁷ The former in *The Times*, 5 October 1822, and latter in *TNA*, Newgate Prison Register, October 1822 (PCOM2/196).

²²⁸ *Morning Chronicle*, 24 July 1823.

²²⁹ *Morning Post*, 31 December 1853.

²³⁰ *OBP*, trial of William Jones, May 1800 (t18000528-128); *TNA*, Home Office: Criminal Registers, May 1800 (HO26/8/66); *OBP*, trial of John M'donnell, October 1850 (t18501021-1758); *TNA*, Home Office: Convict Hulks, Convict Prisons And Criminal Lunatic Asylums Quarterly Returns Of Prisoners, 21 October 1850 (HO8/111).

The ages of defendants in tertiary cases, the alleged victims, were present in original reports or uncovered in a much greater amount. Their ages were varied, though tended to be young, with this designation in two *Morning Post* reports for extortion.²³¹ In fact the most common age found was nineteen, and the largest clump between the ages of twenty and twenty-four, given in twenty-two records. Only eight were in their late twenties, and when concerning men over this age, the number falls hugely. Reported just thrice were men in their thirties, and other documents provided two additional thirty-year olds where an age was not given in the original reports. While in an original report one man was stated to be older at fifty-six, documents gave his age as thirty-six. If the document is correct, then the oldest defendant was Christopher Conlan, a fifty-year old imprisoned for wounding a servant who sexually assaulted him in a public house in Spitalfields.²³² Therefore, defendants who accused other men of sexual assault in their defences for other crimes were generally young men in their twenties, matching secondary cases and patterns for other crimes.

The ages of prosecutors in tertiary cases, men accused of committing sexual assault, were rarely given, with evidence uncovered varying between both young and old. The youngest was eighteen and another nineteen, though most were in their twenties. Only one man was in his thirties, thirty-six-year-old Frederick Randall, who prosecuted a clerk for extortion.²³³ Their ages increase with two older in their forties, and another two in their sixties. Even more, one man was seventy, with the decade range of between seventy and eighty stated in a prosecution at the Old Bailey, the oldest man involved in a case containing male on male sexual violence uncovered in the present thesis.²³⁴ Furthermore, the general age range of 'old man' appeared only once. Hence, men who were robbed and subsequently accused of sexual assault were also generally young men in their twenties, though not uncommonly several decades older.

While it is dangerous to make sweeping statements based on incomplete data, ages found from reports and additional documents indicate a somewhat likely and expected trend. Men who were prosecuting primarily for sexual assault tended to be young men in their twenties,

²³¹ *Morning Post*, 19 January 1831; 27 November 1833.

²³² *OBP*, trial of Christopher Conlan, November 1838 (t18381126-95).

²³³ *OBP*, trial of John Joyce, August 1844 (t18440819-1946).

²³⁴ *OBP*, trial of Joseph Braznell and John Wren, September 1850 (t18500916-1589).

with few above thirty, who were likely users of the streets at night due to being unattached. In contrast, perpetrators tended to be older, with most in their thirties, and sometimes several decades older, suggesting they were deliberating going out seeking sexual encounters. When a sexual assault was secondary to a prosecution, there is a lack of information on the prosecutors. However, the defendants tended to be young men, mostly in their twenties – unlike in primary cases where they were usually older. When a sexual assault was tertiary to a prosecution, the defendants and so alleged victims were generally young men in their twenties, matching with the alleged victims in primary cases, and what is generally known about patterns of criminality. Of the prosecutors they accused of sexual assault in their defence, most were also in their twenties, though not uncommonly older, sometimes by several decades, including affluent men who were obvious prospects for robbery and extortion. Again, the alleged victims and perpetrators in cases where a sexual assault is either primary or tertiary contained relatively similar age ranges, with greater disparities within the primary cases.

Overall, the age profile of participants is largely anticipated, with alleged victims young and perpetrators older. These age ranges conform with a smaller sample of newspapers and criminal petitions collected by Cocks, though he is talking more about the criminalisation of homosexuality rather than sexual assaults.²³⁵ However, as has been demonstrated, there are distinct differences between whether a sexual assault was the primary, secondary, or tertiary driver of a prosecution.

Occupations

What was the social status of the prosecutors and defendants? Cocks' study found that men of low or middling social standing were most often involved in homosexual crime, with gentlemen and the like featured in a fifth of press reports.²³⁶ This final section queries these findings by focusing on cases of alleged sexual assault through examination of participant's occupations. Data on occupations was available more frequently than their ages, though varied depending on the type of prosecution. When a sexual assault was the primary or secondary driver of a prosecution, more information was available for prosecutors than

²³⁵ Cocks, *Nameless Offences*, 25–26.

²³⁶ Cocks, 26–27.

defendants, with the reverse true for tertiary cases. Online databases usefully returned an extra eight percent. Hence, in general, more is known about the occupations of alleged victims, though enough material has been found to make some general conclusions.

When a sexual assault was the primary driver of a case, the highest occupational category was policemen. Police constables as victims of sexual assault has been discussed extensively already.²³⁷ Next, a fifth of victims were members of the military or armed forces, a designation that covers every decade in the period of study. Many simply stated they were soldiers or more specifically, privates, though some higher ranks were given, including non-commissioned officers such as a corporal and a serjeant.²³⁸ One man stated he was employed as a sentry in St James's Park when he was sexually assaulted.²³⁹ Parks are highly represented in these soldier's accounts of sexual assaults, present in nearly half of cases when it is stated. Indeed, soldiers in parks had a reputation for being 'open to all manner of solicitation'.²⁴⁰ Soldiers also featured highly in tertiary cases, as explored later.

²³⁷ See above, 144-147.

²³⁸ *Morning Chronicle*, 24 May 1828; *Morning Post*, 12 January 1815.

²³⁹ *Morning Post*, 8 October 1839.

²⁴⁰ Cocks, *Nameless Offences*, 58.

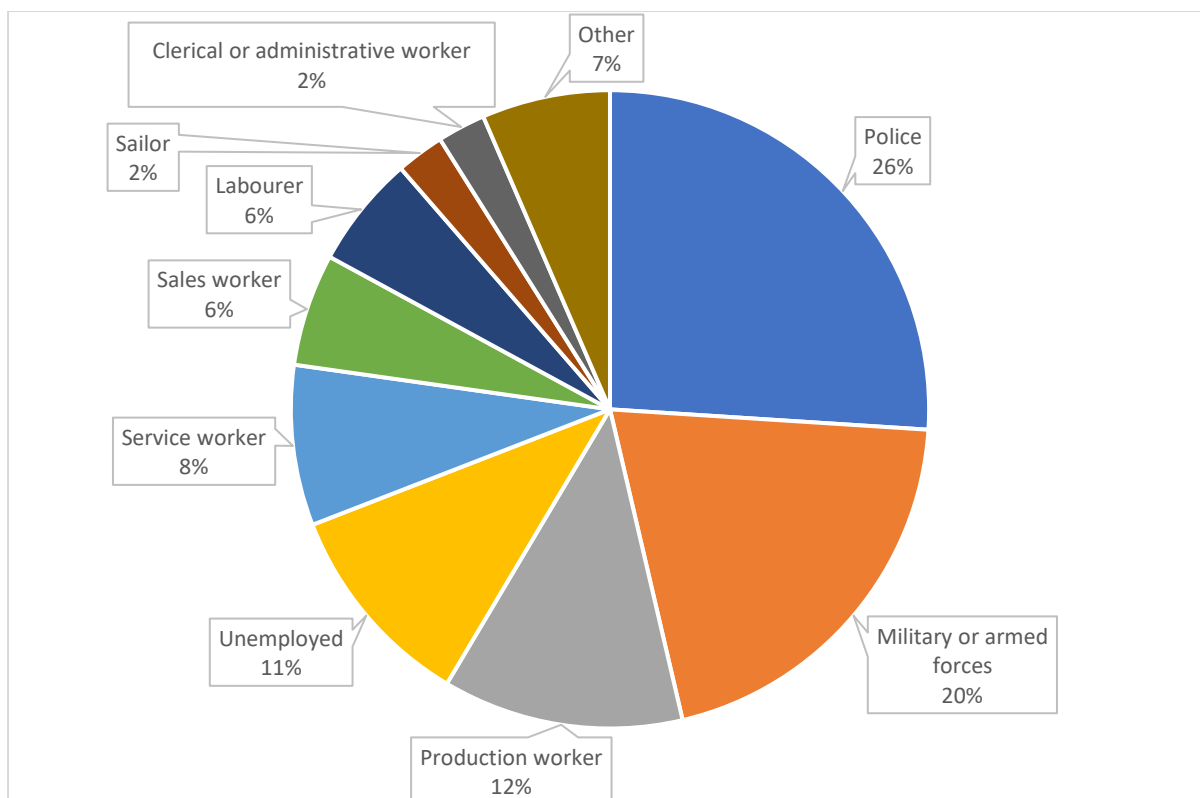


Figure 9 - Occupations of prosecutors when sexual assault was the primary driver of a case. Source: LMA, MJ/SP (1768-1836), OB/SP (1786), WJ/SP (1827); *The Times*, *Morning Post*, *Morning Chronicle*, *Lloyd's Weekly Newspaper*, *Reynolds's Weekly Newspaper* (1772-1860)

The other occupations indicate that many men were of similar social standing. For example, a similar proportion were production workers such as engineers or tailors, and service workers such as domestic servants and waiters. There were slightly lower proportions for sales workers such as shop assistants and ironmongers, along with labourers, the latter of which could be a formal term that had little to do with actual occupations, or potentially be used by gentlemen to hide their social status.²⁴¹ Indeed, gentlemen are underrepresented as prosecutors in primary cases of sexual assault. Only a small amount were described as clerical or administrative workers, and only one man was a professional (a lawyer).²⁴² Another was a medical student, though he gave no indication of where he studied. What is apparently missing from these figures is the upper classes – unless they were in the unemployed category, with no other indication of their status – who do not appear as prosecutors of sexual assault at all.

²⁴¹ Cocks, 27, 103.

²⁴² LMA, information of John Ling et al, 7 January 1829 (MJ/SP/1829/01/037).

However, they did appear as defendants. Cocks finds a figure of more than twenty percent of men arrested for homosexual offences as gentlemen or others such as the clergy, which reflects ‘a public fascinated by the transgressions of the respectable’.²⁴³ The numbers here constituted a similar proportion. As can be seen in Figure 10 below, professionals made up one of the largest proportions of defendants, and held jobs such as surgeons, a deputy master of a grammar school, and even a superintendent of the Fine Arts Commission. This also includes Charles Baring Wall, the Member of Parliament for Guilford. Clerks were also highly represented as defendants, and several members of the clergy have also been found, including a Presbyterian Minister.²⁴⁴ However, the upper classes were rarely prosecuted for sexual assault. The ‘other’ category in the chart below contains the only member of the aristocracy that appeared: Robert King, the Earl of Kingston and previously MP for County Cork.²⁴⁵

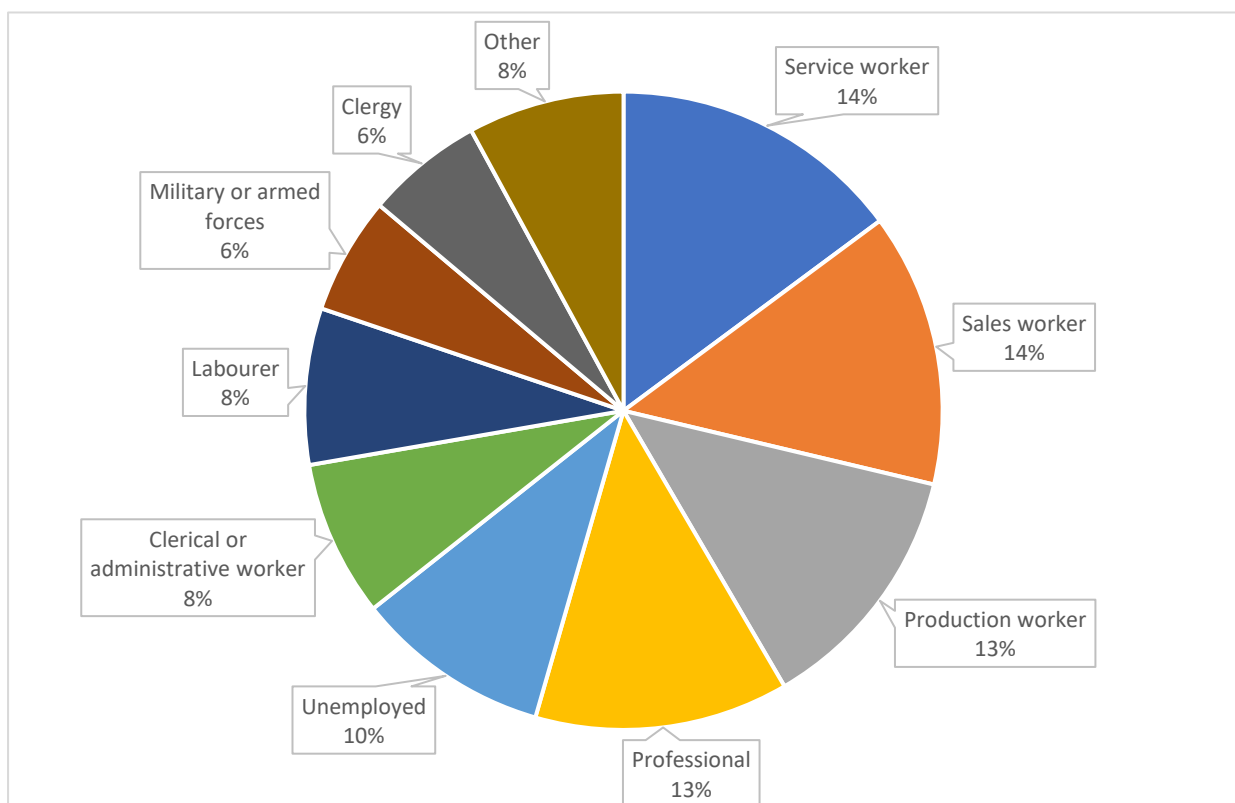


Figure 10 - Defendants when sexual assault was the primary driver of a prosecution. Source: OBO (1761-1785); LMA, MJ/SP (1768-1836), OB/SP (1786), WJ/SP (1827); *The Times*, *Morning Post*, *Morning Chronicle*, *Lloyd's Weekly Newspaper*, *Reynolds's Weekly Newspaper* (1772-1860)

²⁴³ Cocks, *Nameless Offences*, 26.

²⁴⁴ *Morning Post*, 16 July 1851.

²⁴⁵ *The Times*, 1 April 1848.

That said, most were men of lower or middling social standing. A comparable proportion were sales, service, or production workers, at higher rates than their prosecutorial counterparts. On the other hand, only one policeman was reported as a defendant, and a Newgate Prison Calendar gave his occupation as a labourer.²⁴⁶ Men in this category, along with the unemployed, made up a similar proportion to their prosecutors. Therefore, when a sexual assault was the primary driver of a prosecution, most of the men involved were of relatively similar social status. The largest discrepancies were in the role of policemen, nearly always prosecutors, and men of higher social status, who generally only appeared as defendants.

In cases with a sexual assault as secondary in a prosecution, the evidence also shows men were of similar social standing. Of the nine prosecutors, two thirds were sales and service workers, plus one soldier, one man who was unemployed, and one clerk who was indecently assaulted and had his silk handkerchief stolen.²⁴⁷ Of the defendants, again two thirds were sales or service workers, again one soldier, and the last a ballet dancer who robbed and sexually assaulted the aforementioned clerk. Hence, as is evidenced in this case, the men involved in cases containing both sexual assault and robbery were of a similar social status.

How does this compare when a sexual assault was the tertiary driver of a prosecution? Starting with alleged victims, aka defendants – men who used a sexual assault as a defence tactic – the records show that most were soldiers. As with soldiers as prosecutors in primary cases, parks were the most common location mentioned, and soldiers in parks also had a reputation for being ‘not above extortion and blackmail’. Furthermore, Cocks proposed that soldiers had side-lines in prostitution and extortion, which explained their frequent appearance in court cases.²⁴⁸ Moreover, these numbers match with the proportion of soldiers as prosecutors when a sexual assault was the primary driver of a prosecution, indicating that their allegations of sexual may have been truthful, or perhaps more likely that they robbed or extorted men in spaces where it might be believed that a sexual assault could occur.

²⁴⁶ *Morning Post*, 26 July 1844; TNA, Newgate Prison Calendar, 23/08/1844 (HO77/51/13).

²⁴⁷ *Lloyd's Weekly Newspaper*, 22 April 1849.

²⁴⁸ Cocks, *Nameless Offences*, 58.

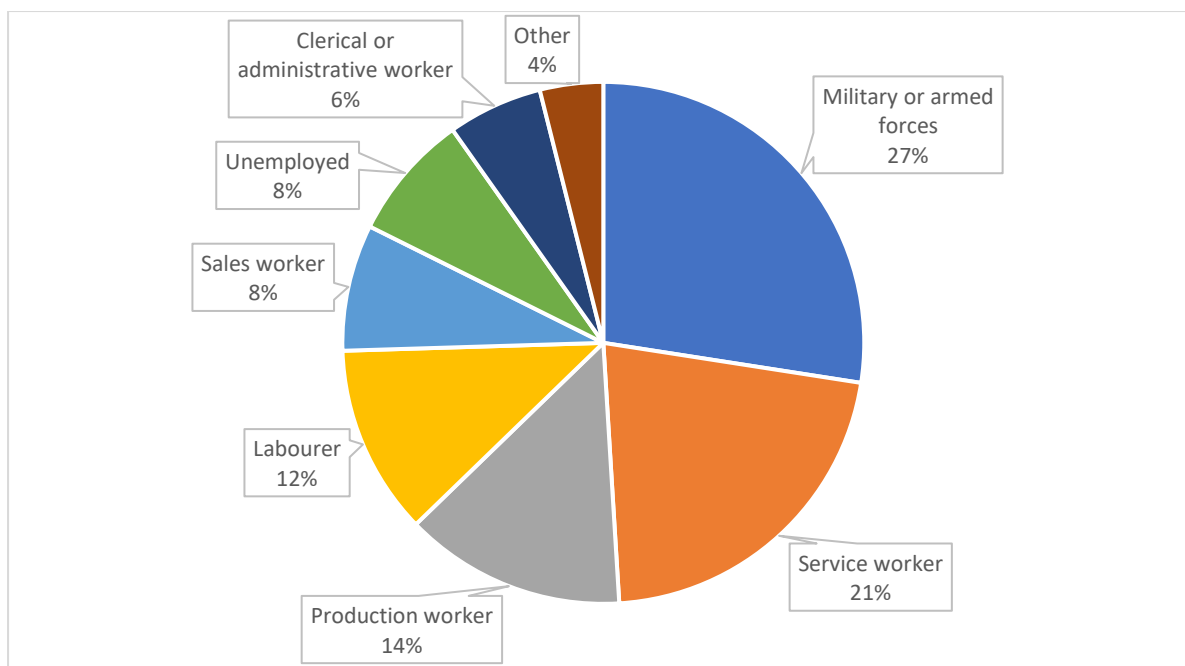


Figure 11 - Defendants when sexual assault was the tertiary driver of a prosecution. Source: OBO (1761-1856); LMA, MJ/SP (1810); The Times, Morning Post, Morning Chronicle (1785-1854)

The next most frequently appearing defendants were service workers, at a higher proportion than prosecutors in primary cases. However, other occupational categories were similar, with production and sales workers at roughly comparable amounts, and fewer unemployed though more labourers. Expectedly, men of higher social standing rarely appeared as defendants in tertiary cases, though there were more clerks, plus one man who stated he was a lawyer.²⁴⁹ However, in general, most men who were being prosecuted for a non-sexual offence and accused a man of sexual assault in their defence were either soldiers or men of lower or middling social status.

²⁴⁹ OBP, trial of John Thomas Morgan, January 1832 (t18320105-151).

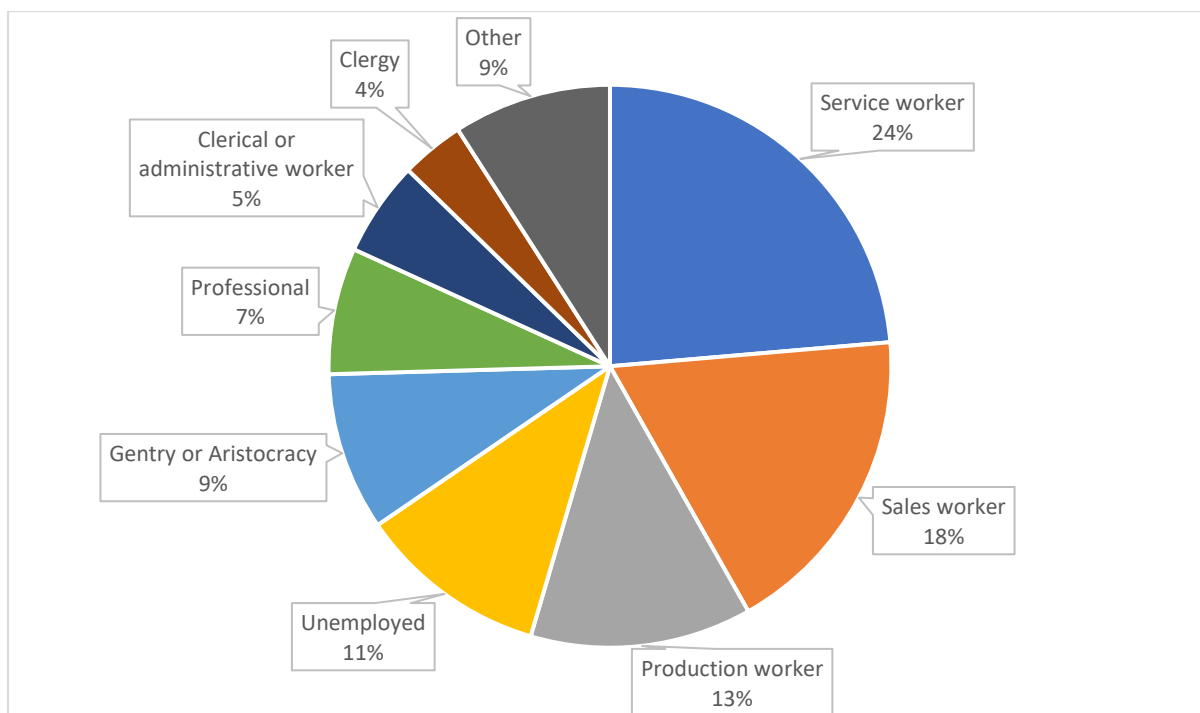


Figure 12 - Prosecutors in tertiary cases of sexual assault. Source: OBO (1761-1856); LMA, MJ/SP (1810); *The Times*, *Morning Post*, *Morning Chronicle* (1785-1854)

Aside from other soldiers, who were absent as prosecutors, the men they accused were usually of similar social status. Again, there was a large proportion of service workers, with more sales workers and a comparable proportion of production workers. As with prosecutors in other types of cases, men who were unemployed or did not need to work appeared more than one might expect, though labourers were absent. Perhaps most exciting for the public at the time was the appearance of men of standing: Edmund Lodge, a biographer of genealogy who held the office of the *Lancaster Herald*, and Robert Johnson Parker and Benjamin Hooker were both esquires.²⁵⁰ Even more fascinating were the upper classes, which included Charles Fielding, second son of the Earl of Denbigh, Sir John Buchannan Riddle, a Baronet and later MP in Scotland.²⁵¹ Clerks and professionals constituted a similar amount, the latter of which included a member of the stock exchange.²⁵² Furthermore, there also appeared a few clergymen, including the curate of Guildford.²⁵³ Therefore, men of higher social standing, especially the gentry and aristocracy,

²⁵⁰ *OBP*, trial of John Hodges, Edward Mahon, and John Rumball, February 1805 (t18050220-32); trial of George Manners, September 1815 (t18150913-60); trial of Thomas Hayes, June 1818 (t18180617-4).

²⁵¹ *OBP*, trial of James Donally, otherwise Patrick Donally, February 1779 (t17790217-40); trial of Thomas Davis, July 1797 (t17970712-55).

²⁵² *The Times*, 3 December 1844.

²⁵³ *OBP*, trial of Samuel Cooper, February 1849 (t18490226-675).

appeared practically only as prosecutors who were accused of sexual assault. Indeed, it was the encounters which contained social inequality that were the likeliest to lead to extortion and accusations of indecent assault.²⁵⁴

These figures show that most participants in cases containing male on male sexual violence were of low or middling social standing. This is unsurprising considering the prominence of working class prosecutors in a variety of studies on crime generally.²⁵⁵ When concerning sex between men, it conforms with the sample collected by Cocks.²⁵⁶ Policemen and soldiers comprised most prosecutors when a sexual assault was the primary driver of a prosecution, and the latter were also most defendants in tertiary non-sexual prosecutions. Professionals and the upper classes appeared relatively infrequently, and mainly as prosecutors in tertiary offences, when a sexual assault had been alleged against them by the defendant. The middling classes comprised roughly a fifth to sixth of London's population on the period.²⁵⁷ Overall, men involved in male on male sexual violence crossed many classes, with most of low or limited social status.

Conclusion

Despite the difficulties of determining 'actuality', this chapter has made several discoveries which help to illuminate the nature of male on male sexual violence in the late eighteenth and nineteenth centuries. The types of sexual violence uncovered show that more violent assaults such as forced penetration were reported little, recovered only from cases where it was the primary charge in a prosecution, though narratives provided a wealth of information, especially concerning the specific details of penetration. Of interest are a few unique occurrences, such as a man forced to penetrate another, and one case potentially involving the use of drugs. However, across all types of prosecution most instances of sexual violence can be categorised as sexual assaults, which generally involved unwanted touching on the genitals of the victim, demonstrating that this act was the standard way of accusing another man of sexual assault, whether the victim was the prosecutor or defendant.

²⁵⁴ Upchurch, *Before Wilde*, 67.

²⁵⁵ Jennifer Davis, 'A Poor Man's System of Justice: The London Police Courts in the Second Half of the Nineteenth Century', *The Historical Journal* 27, no. 2 (1984): 318–19; Kathrine M. Reynolds and Carol Liston, 'Victims as Prosecutors: England 1800–1835', *Societies* 9, no. 2 (2019): 6.

²⁵⁶ Cocks, *Nameless Offences*, 46–47.

²⁵⁷ Schwarz, 'London 1700–1840', 662.

However, identifying the location of sexual violence was easier, as it was disclosed in the majority of cases. From these, we can see that most prosecutions for sexual assault were allegedly committed in public rather than private locations, due to the higher likelihood of witnesses to the assault. Also identified is the prominence of sexual violence – or accusations of it – in the West End, rather than the poorer East End and smaller City of London, though this differed on the type of case. When a sexual assault was the primary driver of a prosecution most occurred in Marylebone and Covent Garden, with secondary cases spread across the capital, and most tertiary prosecutions within or closer to the City. Furthermore, areas which were well policed, such as Mayfair and St James, contained fewer instances of sexual violence.

While it is clear that while sexual assaults were allegedly committed in a diverse range of locations across the metropolis, including bridges, shops, coaches, trains, workhouses, and even short term spaces of confinement, they tended to occur in spaces that with long standing associations with male homosexuality, namely streets and parks. Therefore, not only were men more likely to be the victim of male on male sexual violence in locations connected with homosexual cultures, but they were also more likely to fall victim to other crimes, and also be subsequently accused of committing sexual assault within them, indicating an awareness of them as spaces of homosexuality.

Investigating deeper into when assaults took place show that most were committed in the summer months when temperatures were at their warmest and light greatest, though to a lesser extent than might be expected. Indeed, there is little discrepancy between the other seasons, though winter predictably contained the fewest assaults. However, December was one of the highest months collected. Assaults then, while more likely in summer, were spread throughout the entire year. Furthermore, they were committed throughout the week, with Tuesday and Friday containing the largest proportion for primary and tertiary prosecutions, and the weekend in secondary cases. When enquiring into the specific time of crimes, cases show that – predictably – most happened at night, when darkest. Few assaults were committed in the morning and during the day, with the amount of assaults increasing as light diminished, from sunset, throughout twilight, and into the night. Unsurprisingly, most men were the victims of sexual assault or were accused of committing it in the darkness.

A final exploration was of specific details on the prosecutors and defendants themselves, through an analysis of their ages and occupations. While data was lacking for the former, general trends were found that differed according to the type of prosecution. When a sexual assault was the primary offence prosecuted, most victims were young men in their twenties, with the perpetrators older, mostly in their thirties but not uncommonly several decades older. When it was secondary there is no information on the prosecutors, but the defendants, the men who robbed and committed a sexual assault, were young. Similarly, the defendants in tertiary prosecutions, the alleged victims, were also young men in their twenties, matching not only defendants in secondary cases, but also the prosecutors in primary cases. Again, the prosecutors and alleged perpetrators were mostly in their thirties, though sometimes much older. Hence, the alleged victims and perpetrators of sexual violence, in cases with a sexual assault as the primary or tertiary driver of a prosecution, were a similar age range.

The occupations of the men involved show that most were of low or middling social status. Furthermore, some were even unemployed, showing the importance of expenses and potential prosecutorial assistance from the police. A high proportion of policemen and soldiers prosecuted for a sexual assault committed on them, with most professionals only appearing as defendants in such cases. When a sexual assault was secondary, again there was a similar level of social standing. The same was true for tertiary cases, with the records showing that most defendants, the alleged victims, were soldiers. Professionals and the upper classes, again, tended to only appear as prosecutors, prosecuting for a non-sexual offence and then accused of sexual assault. Generally, however, most victims and perpetrators were of a similar background, across all types of prosecution.

In conclusion, while determining the 'actuality' of male on male sexual violence in the late eighteenth and nineteenth centuries can be difficult due to lack of information, the cases collected here present definite patterns. Most acts were alleged to have been committed at night-time in a public space, especially one connected with homosexuality, and contained sexual touching between two men of a relatively similar age group and social class. At the same time, there was certainly a diversity in these acts, in the type of violence, where and when it occurred, and those involved. The next chapter looks deeper into what happened to these prosecutions in the courtroom.

Chapter Six: Verdicts and Outcomes

This final chapter explores what happened to court cases as they made their way through the criminal justice system. As before, it is split by the importance of male on male sexual violence to a case, whether it was the primary offence prosecuted, secondary to a charge of robbery, or used as a defence tactic, and so the tertiary driver of a prosecution. What follows is an examination of what each court thought of prosecutions largely through analysis of their verdicts, whether there were any distinct sentencing patterns, and how these matched with actual post-trial outcomes.

While this chapter contributes to understandings of sexual assaults between men which made their way through the criminal justice system, it is not an exhaustive recovery of all crimes that made it to court. When concerning newspaper reporting, prosecution, trial, and outcome ‘became a fundamental staple’ in the early nineteenth century.¹ At the same time, newspaper coverage of court reports was selective, and went through a series of filters. The desire to sell through the use of sensationalism was certainly present in some publications, for example.² The statistically least common offences to occur tended to receive most media attention.³ In the nineteenth century, at least compared to the eighteenth, aversion to the reporting of sexual offences was strong.⁴ Therefore, newspapers did not report every act of male on male sexual violence that occurred, but they also did not report every instance known to them, meaning newspaper coverage was not necessarily representative.⁵

Furthermore, the ‘dark figure’ – crime which happened but was not reported – is practically impossible to determine.⁶ While it may be hinted at from the data collected here – though with the caveats explained above – this chapter is less concerned with the actual incidence

¹ David Nash and Anne-Marie Kilday, eds., *Fair and Unfair Trials in the British Isles, 1800-1940: Microhistories of Justice and Injustice* (London: Bloomsbury Academic, 2020), 3.

² Rosalind Crone, *Violent Victorians: Popular Entertainment in Nineteenth-Century London* (Manchester: Manchester University Press, 2012), 232.

³ John Carter Wood, ‘Crime News and the Press’, in *The Oxford Handbook of the History of Crime and Criminal Justice*, ed. Paul Knepper and Anja Johansen (Oxford: Oxford University Press, 2016), 305.

⁴ Daniel J. R. Grey, ‘“Monstrous and Indefensible”? Newspaper Accounts of Sexual Assaults on Children in Nineteenth-Century England and Wales’, in *Women’s Criminality in Europe, 1600–1914*, ed. Manon van der Heijden, Marion Pluskota, and Sanne Muurling (Cambridge: Cambridge University Press, 2020), 192–93.

⁵ Only cases pertaining to London have been included. Newspapers often reported on crime in other locations – especially *The Times* – which may be used in the future.

⁶ Peter King, *Crime, Justice and Discretion in England, 1740–1820* (Oxford: Oxford University Press, 2000), 11.

of sexual violence committed between men, but rather the workings of the criminal justice system in relation to the collected cases, and the reporting of them in the sources consulted.

When a sexual assault was the primary driver of a prosecution, the main questions concern the levels of physical violence and presence of witnesses. During this period there was a growing intolerance of interpersonal violence.⁷ Did heightened violence and corroborating evidence contribute to conviction or more severe sentences? In cases where a sexual assault was secondary, with a prosecutor who testified that a defendant both robbed and sexually assaulted them, did this combination of crimes increase the likelihood of a guilty verdict and result in additional punishment? The last set of cases contain sexual assaults as the tertiary driver of a prosecution: a claim of sexual assault used as a form of defence when prosecuted for another crime. Did this defence tactic have any effect on the verdict, or result in lighter punishment for defendants? Can any sympathy for the men who claimed it be detected? Finally, across all the evidence uncovered, were convicted men treated differently to the norm?

What happened to the cases brought before the courts?

This section explores verdicts given by judges and juries and how they shifted across the period of study. It breaks down these figures firstly by the status of a sexual assault as the primary, secondary, or tertiary charge, and also by the court. Additional context to cases was provided by several online databases, including the Digital Panopticon, Ancestry and Findmypast, as outlined previously.⁸ Different outcomes were possible depending on the court where a prosecution was taken, though the availability of this information depends on the source.

For instance, newspaper reports of magistrate and other courts were limited in the amount of information they provided. An important function of magistrate courts was deciding whether to send a case for trial at a higher court. If a case could not be summarily tried then magistrates had no option but to commit defendants for trial, which generally meant the

⁷ John Carter Wood, *Violence and Crime in Nineteenth-Century England, The Shadow of Our Refinement* (London: Routledge, 2004).

⁸ See Chapter One, 33-35.

accused being put in gaol while awaiting a decision by a grand jury.⁹ In the reporting of crime news, committal was a standard phrase.¹⁰ Indeed, King found that most articles ended with a statement that the accused had been committed for trial in the late eighteenth and early nineteenth centuries.¹¹ The evidence uncovered here matches this finding. A statement that defendants were 'committed', 'remanded', 'bailed', or that a case was 'sent to jury' was the outcome of two thirds of prosecutions at magistrate courts found in newspaper reporting, with similar proportions whether a sexual assault was primary or tertiary to the main charge. Therefore, most cases that contained evidence of sexual assault heard at magistrate courts and reported in the newspapers were passed higher through the criminal justice system, signifying that they were often deemed serious enough to warrant extended consideration.

Occasionally assaults were followed up in later editions, for example an indecent assault committed by John Garner was initially reported in an early December 1842 issue of the *Morning Post*, with full proceedings and the verdict appearing one week later.¹² However, there can be a lack of further information – or if an assault proceeded no further or was dealt with summarily, there may be no indication of this in the papers. On the other hand, newspapers sometimes reported the statements of judges and juries, allowing examination of the reasons for their decisions.

At the Middlesex and Westminster Sessions, cases might not be taken further due to inaction on the side of the prosecutor, and the Grand Jury could decide that bills should not proceed. Opportunity was available for alternative settlements too, which may have occurred but is not indicated in the surviving records.¹³ Due to research being conducted on examinations, which rarely stated trial or post-trial information, verdicts were not available for more than a third of cases. However, newspaper reporting of these courts and the use of

⁹ Clive Emsley, *Crime and Society in England, 1750–1900*, 3rd edition, 2005 (Harlow: Pearson Education Limited, 1987), 188–89.

¹⁰ Udo Fries, 'Crime and Punishment', in *Early Modern English News Discourse*, ed. Andreas H. Jucker (Amsterdam: John Benjamins Publishing Co, 2009), 25.

¹¹ Peter King, 'Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London', *Continuity and Change* 22, no. 1 (2007): 94.

¹² *Morning Post*, 8 December 1842; 15 December 1842.

¹³ See Norma Landau, 'Appearance at the Quarter Sessions of Eighteenth-Century Middlesex', *The London Journal* 23, no. 2 (1998): 30–52; 'Indictment for Fun and Profit: A Prosecutor's Reward at Eighteenth-Century Quarter Sessions', *Law and History Review* 17, no. 3 (1999): 507–36.

online databases meant that information was found for several cases, putting the overall number of prosecutions without a verdict at fourteen out of thirty-eight. Given that this additional data came partially from prison records, it is perhaps more likely that guilty verdicts were found. Those without a verdict were probably not guilty, no bills, or no prosecutions. While it is likely that verdicts can be found in other records such as sessions books (MJ/SB) or sessions rolls (MJ/SR), these have not been consulted at present due to time constraints.

Outcomes were available for every case taken to the Old Bailey due to them being printed in the *Proceedings*, and immediately clear is the predominance of guilty verdicts. Shoemaker notes that the *Proceedings* were biased towards conviction, as publishing these allowed the governing authorities to broadcast the message that justice was not only fair, but that guilty verdicts would attract severe punishment.¹⁴ Aside from convictions and acquittals, partial verdicts, whereby the defendant was found guilty of a reduced offence, were possible and the result of multiple cases. Furthermore, although not the outcome of any prosecutions uncovered that contained sexual violence, special verdicts (when no verdict was given or it was provisional or respited) were also possible, as were miscellaneous others.¹⁵

Sexual violence as the primary driver of a prosecution

First examined are prosecutions when sexual violence was the primary driver of a prosecution, which predominated at magistrate courts and the Middlesex and Westminster Sessions, in contrast to the Old Bailey. This section not only explores the verdicts given in these prosecutions, but also asks what the court thought of them, starting with the summary courts and moving higher. Did the presence of physical violence and testimony of witnesses aid conviction? Were victims believed?

¹⁴ Robert Shoemaker, 'The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London', *Journal of British Studies* 47, no. 3 (2008): 567.

¹⁵ For more on the outcomes possible at the Old Bailey see Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'Crime and Justice - Trial Verdicts', *Old Bailey Proceedings* (hereafter *OBP*), <https://www.oldbaileyonline.org/static/Verdicts.jsp>, accessed 25 May 2021.

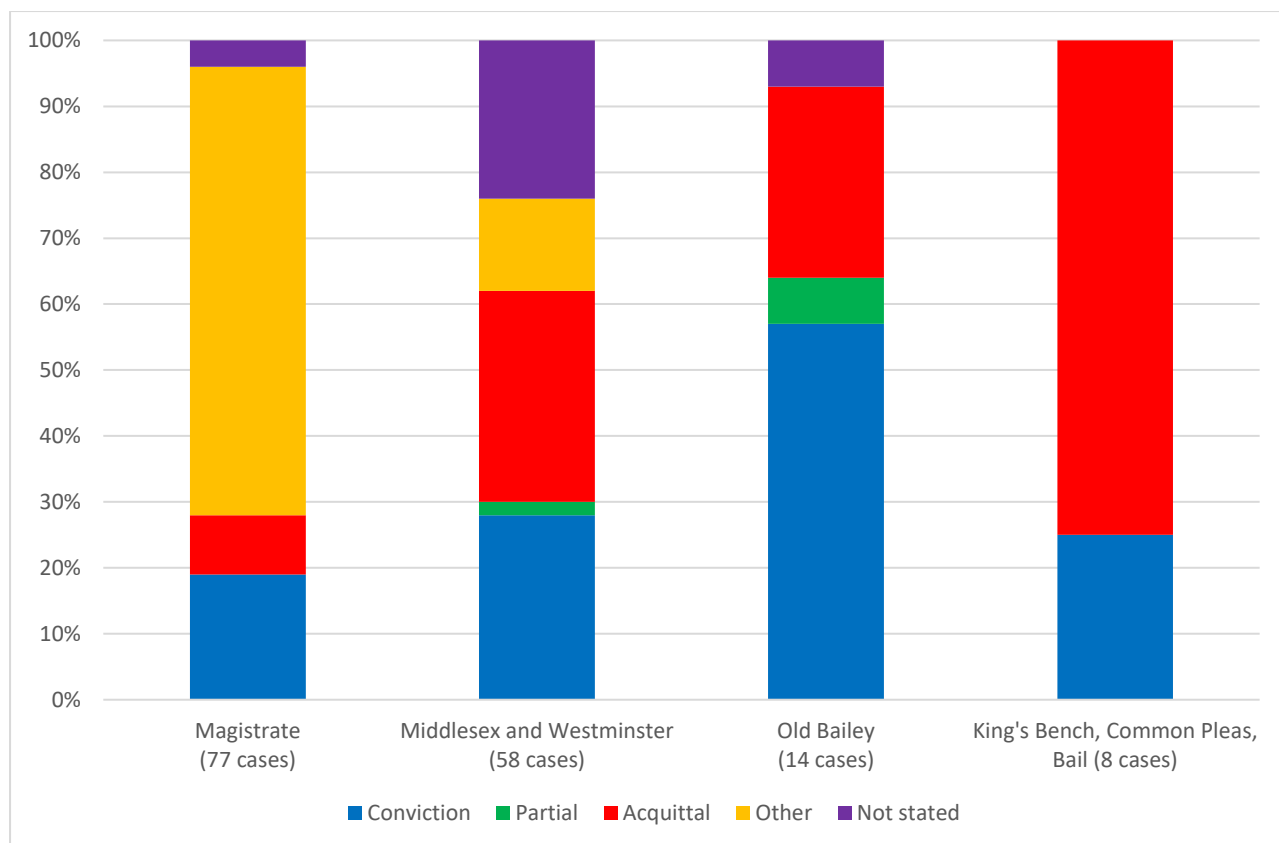


Figure 13 - Verdicts when sexual assault was the primary driver of a prosecution. Source: LMA, MJ/SP (1768-1836), OB/SP (1786), WJ/SP (1827); The Times, Morning Post, Morning Chronicle, Lloyd's Weekly Newspaper, Reynolds's Weekly Newspaper (1772-1860)

As can be seen in Figure 13, more than two thirds of cases heard at magistrate courts were sent higher when a sexual assault was the primary driver of a prosecution. What's more, physical violence and the presence of witnesses appears to have resulted in a higher chance of committal. The only case of what seems to be attempted forced penetration uncovered in newspaper reporting was passed higher by a magistrate of Marlborough Street, for example, suggesting that heightened violence increased the likelihood of a sexual assault sent to trial.¹⁶ One prosecution also contained multiple witnesses, and was passed higher after a magistrate at Guildhall noted a charge of indecent assault as a 'serious crime'.¹⁷ While the evidence of one prosecutor was deemed untrustworthy by a magistrate at Union Hall, he also noted the lack of benefit for the witnesses, so committed the defendant.¹⁸ Conversely, one magistrate had made up his mind to commit before witnesses were even

¹⁶ *The Times*, 6 July 1850.

¹⁷ *Morning Post*, 11 August 1847.

¹⁸ *The Times*, 10 September 1841.

called, evidently believing the prosecutor.¹⁹ More usually however, the testimony of witnesses contributed to decisions to commit. Therefore, this evidence suggests that the presence of witnesses and more physical violence were important factors in decisions to send prosecutions for trial at higher courts when sexual assault was the primary driver of a case.

Summary conviction was the next most likely outcome (19%), with guilty verdicts predominating at the beginning and end of the period. Instead of being passed higher, conviction appears to have been given in cases that contained similar levels of physical violence but a lack of witnesses. Indeed, the only report which explicitly stated there was a witness was crucial in securing this verdict. A sitting magistrate at Marylebone said that he would have acquitted the perpetrator if a policeman had not witnessed the assault, believing the victim acted 'exceedingly wrong' in allowing the behaviour to go on so long, perhaps hinting that he thought the assault was consensual.²⁰ Another wished to make an example of the perpetrator, despite a lack of witnesses. He commented that 'filthy and disgusting acts' – sexual assaults outside print shop windows – were frequent and should be suppressed, as most 'delinquents' escape.²¹ In a separate case, a magistrate at Guildhall stated he did not intend to pass the case to the Old Bailey due to the perpetrator being intoxicated at the time, summarily convicting him instead.²² Hence, convictions tended to be given by magistrate courts when narratives of sexual assault were believed or when magistrates wanted to make an example, but when there was not a case to be answered by a higher court.

One higher court was the Middlesex and Westminster Sessions, with convictions given in a little under a third of cases found (28%). None were given until the 1820s, one of only two decades when conviction outnumbered acquittals. Physical violence seems to have contributed to securing a guilty verdict; at least two prosecutors described forced penetration, with one man testifying that a discharged soldier's 'private parts were between

¹⁹ *The Times*, 14 February 1835.

²⁰ *Reynolds's Weekly Newspaper*, 13 November 1853.

²¹ *The Times*, 23 July 1850.

²² *Morning Post*, 16 July 1851.

my Thighs'.²³ At the end of the decade, two Frenchmen were convicted of indecent assault and 'acts of brutality'. However, the magistrate stated that ignorance of English language and customs resulted in a lesser sentence than usual.²⁴ The rate of conviction fell in the 1830s to seven of twenty cases. In 1833 the jury stated that they thought Daniel Malcolm should have been tried for a capital sentence instead of indecent assault due to the 'atrocities' of his practices.²⁵ In the final conviction that decade, the magistrate specifically thanked the prosecutor for charging one man, as he thought 'seducing the innocent' was worse than consensual practices. The defendant was found guilty of an 'unnatural attempt' on John Muers.²⁶ Six cases have been uncovered in later decades, with only one that resulted in conviction. William Brown was found guilty of indecently assaulting a constable at Westminster; *Lloyd's Weekly Newspaper* noted the defendant was a member of a gang of 'miscreants who infest parks and print shops of metropolis'.²⁷ Therefore, physical violence, as well as previous behaviour, appears to have contributed to convictions at this court.

As well as physical violence, at least half of the prosecutions contained one or multiple witnesses. Two paupers saw one man sexually assaulted in a dark space of the workhouse.²⁸ In another, a policeman corroborated the statement of a prosecutor who stated he was sexually assaulted in a 'stable-yard in the neighbourhood of Baker Street'.²⁹

In the cases of male on male sexual violence uncovered for the Middlesex and Westminster Sessions the rate of conviction was 57% for the 1820s, and lower at 35% for the 1830s, suggesting an increased unwillingness to convict. More specifically, conviction was 50% for attempted sodomy in the 1820s. Cases of conviction tended to contain more physical violence and witnesses.

These particulars also appear to have assumed importance in securing conviction at the Old Bailey. When the primary charge was for a sexual assault, guilty verdicts were given in 57% of cases. Breaking down by source shows a rate of 100% in the *Proceedings*, and 60% in

²³ *London Metropolitan Archives* (hereafter *LMA*), information of Robert Jervins et al, 18 May 1833 (MJ/SP/1833/05/051).

²⁴ *Morning Chronicle*, 12 January 1829.

²⁵ *The Times*, 25 June 1833.

²⁶ *Morning Chronicle*, 8 January 1834.

²⁷ *Lloyd's Weekly Newspaper*, 14 May 1843.

²⁸ *LMA*, information of John Harris et al, 23 December 1826 (MJ/SP/1827/01/074).

²⁹ *Morning Post*, 2 March 1832.

newspaper reports. At least three prosecutions contained narratives of forced penetration, suggesting that physical violence was a contributory factor. For instance, one judge in a case of attempted sodomy in 1785 commented that it was a heinous crime, with the perpetrator convicted on clear evidence.³⁰ The following year, Richard Harris testified he suffered repeated forceful penetrations from another pauper in Hendon Workhouse, with witnesses to the assaults.³¹ These prosecutions again suggest the importance of physical violence and witnesses in securing convictions at the Old Bailey.

Cases uncovered for more unique courts contain only sexual assaults as the primary driver of a prosecution. Of the five cases taken to the King's Bench, only one resulted in conviction (20%). This was despite the magistrate stating that the prosecutor, a 25-year-old chemist, might be insane due to his demeanour during the case, making the guilty verdict somewhat surprising.³² At the Common Pleas court, verdicts were more even in the two prosecutions uncovered, with one resulting in conviction (50%). Unfortunately, though the jury decided to convict 'M.Feret', no details are given as to why.³³ At these courts, conviction was less likely than acquittal, though again, the overall number of cases collected is low, making any assumptions on the influence of sexual assault narratives difficult to prove.

Partial verdicts have also been uncovered in two newspaper reports which did not state a court. Both were eighteenth century reports that detailed prosecutions for attempted sodomy. The first was one of the earliest newspaper articles found and contained an accusation of sexual assault from one waiter to another in 1776. The lesser sentence was given due to the good character of both the prosecutor and defendant, according to the *Morning Post*, who also commended the jury for finding an 'equitable medium' in giving this verdict.³⁴ Similarly, thirteen years later Lewis Disney Fytche was convicted by a special jury that 'consisted of the finest men of the country', who took two hours to decide. Perhaps the presence of a 'number of most respectable Gentlemen' in Fytche's defence, who stated his contrary tendencies, led to this lesser charge.³⁵ Only one partial verdict has been found for

³⁰ *OBP*, trial of Roger Sweetman, September 1785 (t17850914-164).

³¹ *LMA*, information of Richard Harris et al, 17 February 1786 (OB/SP/1786/02/019); *OBP*, trial of John Cole, February 1786 (t17860222-129).

³² *The Times*, 8 February 1853.

³³ *Morning Post*, 30 May 1854.

³⁴ *Morning Post*, 16 February 1776.

³⁵ *The Times*, 28 July 1789.

the Middlesex Sessions, as the result of an indecent assault prosecution in 1852. Instead, John Colbourne was found guilty of common assault, though the short 43-word article gave little other detail.³⁶ Again, only one has been found for the Old Bailey. This is despite the fact the defendant had indecently assaulted two policemen, as he pleaded guilty to common assault.³⁷

Acquittals were the result of seven prosecutions at magistrate courts, heard throughout the period of study. The only decade where they outnumbered convictions was the 1820s, with even rates of acquittal and conviction in the 1830s and 1840s. Several reasons were provided, for instance, in a case at Guildhall, the magistrate noted the groundlessness of one charge of indecent assault, saying that the prosecutor should be indicted for perjury instead.³⁸ Witnesses noting the time prosecutors and defendants spent together surrounding sexual assaults also appeared to contribute to acquittals, hinting at the possibility of consensual relations. For example, a policeman witness questioned why the prosecutor – also a policeman – allowed ‘familiarity’ to continue for five minutes without him knocking the defendant down. The jury believed it was a false charge, and the *Morning Post* commented that a report into the constable was needed for the credit of the police.³⁹ Similarly, a judge of Union Hall was confused as to why a watchman did not resist or arrest the defendant sooner after becoming the victim of an indecent assault in 1823.⁴⁰ Although witnesses provided important testimony for cases to be passed to trial at a higher court, they could also make acquittals likely by commenting on the familiarity of prosecutors and defendants, and gaps in their narratives.

Acquittal was more likely at the Middlesex and Westminster Sessions, and the likelihood increased over time. Of the five prosecutions that took place before the 1820s, three verdicts were found in newspaper reports – all acquittals for attempted sodomy. The prosecutor’s evidence was stated to be contradictory in the earlier case, while the jury also did not believe the prosecutor’s narrative in the other two.⁴¹ In the 1820s, not guilty verdicts

³⁶ *Morning Chronicle*, 24 September 1852.

³⁷ *The Times*, 3 February 1849; *OBP*, trial of Walter Smith, January 1849 (t18490129-535).

³⁸ *Lloyd's Weekly Newspaper*, 23 September 1849.

³⁹ *Morning Post*, 27 March 1860.

⁴⁰ *Morning Chronicle*, 24 July 1823.

⁴¹ *The Times*, 5 April 1793; *Morning Post*, 14 February 1804; 3 December 1808.

were given in four cases (29%); most of these contained unwanted touching on the genitals, with only one categorised as a forced penetration. The next decade saw an increase in not guilty verdicts, which resulted in the same proportion of acquittals than convictions (35%), again mostly sexual assaults. In two cases the magistrate emphasised that the charges of indecent assault were easy to make, suggesting an increased reluctance to convict over the previous decade.⁴² Furthermore, the level of force, though present, appeared much less than cases which resulted in guilty verdicts. This reluctance also appeared in the five cases uncovered for the 1850s, four of which resulted in acquittals for indecent assault (80%). In one, the magistrate claimed the prosecutor was a 'filthy fellow' who accused men of assault in parks and told him to get out of court.⁴³ Therefore, over time, cases of sexual violence between men heard at the Middlesex and Westminster Sessions were increasingly likely to end in acquittal for perpetrators.

Of sexual assaults prosecuted at the Old Bailey only four resulted in acquittal – all collected from the newspapers – and in three of these the jury explicitly stated that they gave no credence to the prosecutor's narratives of sexual assault. The defence counsel of one man also commented on the lack of witnesses.⁴⁴ In another, the *Morning Post* noted that the prosecutor 'dressed like a beggar', and was given one of the most 'rigorous cross-examinations ever heard in a court of Justice'. Furthermore, a Bow Street officer stated that he had previously been in custody and had a bad character.⁴⁵ These cases suggest that convictions for sexual assault were difficult to secure if there was a lack of witnesses or if a prosecutor had previously been known to the police.

The few prosecutions uncovered for more unique courts showed a disposition towards acquittal, especially the King's Bench. Indeed, three of four juries handed them out without hesitation, and in the other, the reasons given are not reported, but which resulted at an 80% acquittal rate at this court.⁴⁶ In the acquittal at Common Pleas, a witness disproved the possibilities of events taking place. Furthermore, the judge declared that the case was possibly one of mistaken identity, declaring the prosecutor innocent and the defendant not

⁴² *Morning Chronicle*, 9 January 1830; 22 April 1833.

⁴³ *The Times*, 10 January 1851.

⁴⁴ *Morning Chronicle*, 19 June 1844.

⁴⁵ *Morning Post*, 11 February 1846.

⁴⁶ *Morning Chronicle*, 10 December 1776; *The Times*, 13 May 1833; 23 June 1836; 21 June 1860.

malicious.⁴⁷ The singular case at the Bail Court returned the same verdict for a similar reason, with the jury imputing no blame to the victim, a policeman, as they believed he acted under a misconception, while also noting the ‘high character’ of the defendant.⁴⁸ Indeed, character appears integral, as one defendant was an MP, one a theatre owner, and one a reverend. Two were not stated, with another a butler. If one could afford the cost of moving a case to the King’s Bench, they had a good chance at being acquitted. Although prosecutions containing evidence of male on male sexual violence at these courts were few, all were when the primary charge was sexual assault, and most ended in acquittal for defendants.

Aside from acquittal and convictions for full or partial charges, another possibility was no bill. At the Middlesex and Westminster Sessions, the greatest disparity between the 1820s and 1830s was in the number of bills not being found by the Grand Jury. In the 1820s this only occurred in one case of ‘unnatural misdemeanour’, the details of which suggest an attempted forced penetration. It occurred in the victim’s house when the perpetrator came to lodge with him, and while the victim told others about the assault, there were no witnesses to it.⁴⁹ It is likely that this lack of evidence of penetration, and the lack of witnesses, led to the bill not being found. The other bills thrown out by the Grand Jury increased to six the following decade, a significant increase. All of these have been categorised as sexual assaults rather than forced penetration and contained some propositioning, hence, less physical violence than cases which resulted in convictions. Four out of six had witnesses, but who did not see the specific assaults take place. It is most likely due to this reason that the bills were not found, with in total no bills resulting in the joint largest category of verdict for this court. As such, corroborating evidence appears critical in securing cases passed by the Grand Jury. However, even if no bills were found, the evidence suggests that victims were increasingly likely to press charges, even for less serious assaults. As such, sexual violence between men seems to have been more acceptable to bring into the public domain, and no doubt the expenses granted to prosecutors in misdemeanour cases helped.

⁴⁷ *Morning Chronicle*, 23 June 1823.

⁴⁸ *The Times*, 22 June 1842.

⁴⁹ LMA, information of Thomas Glover et al, 29 February 1828 (MJ/SP/1828/04/054).

Another possible outcome were no prosecutions, which could arise for many reasons; perhaps an informal settlement was reached, or the court was enlisted merely to scare a defendant, or the costs of prosecution were too high. Between 1810-1870 nearly a quarter of all sodomy and a third of attempted sodomy cases did not proceed due to the prosecutor not showing up or the Grand Jury rejecting the case.⁵⁰ Several were found here, including in newspaper reporting. In a short report with the prosecutor's name unmentioned, one defendant was a waiter at the Bull and Mouth who had been hiding on the Isle of Man for eighteen months.⁵¹ Perhaps the length between apprehension and trial meant that the prosecutor did not wish to pursue the case. Furthermore, one case of indecent assault at the Middlesex Sessions was not taken further. Since the prosecutor was stated to be a non-descript 'labourer', perhaps he did not deem the expense or time worthwhile.⁵² Twenty years after this, in a case reported in *The Times* a defendant was discharged due to no prosecutor appearing. He turned up to give evidence thirty minutes later.⁵³

When sexual assaults were the main charge prosecuted, the courts dealt with them in various ways. While at the Old Bailey most ended in conviction, other courts were more evenly split between conviction and acquittal. Furthermore, the largest proportion of prosecutions taken to magistrate courts were passed to higher courts, indicating their seriousness. The evidence at all courts suggests that heightened physical violence, and especially the presence and testimony of witnesses, contributed to decisions to commit or convict defendants, while a lack of witnesses ended in acquittals or no bills. Conversely, witness testimony also disproved narratives of sexual assault in several cases, especially when the familiarity of prosecutors and defendants was emphasised. Furthermore, defendant's with high character also appear more likely than others to have prosecutions against them end in acquittal.⁵⁴

⁵⁰ Upchurch, *Before Wilde*, 102.

⁵¹ *Morning Chronicle*, 25 October 1809.

⁵² LMA, information of Abraham Perkins, 15 March 1828 (MJ/SP/1828/04/073); see Chapter Three, 60-62, for discussion on the costs of prosecution.

⁵³ *The Times*, 8 January 1848.

⁵⁴ See Chapter Four, 120-122.

Sexual assault as the secondary driver of a case

How do these verdicts compare with cases with a sexual assault as the secondary charge, with another, non-sexual offence as the main crime prosecuted? Did assertion of both robbery and sexual assault increase the likelihood of conviction? Only one case has been uncovered that was not taken to the Old Bailey and which did not result in conviction. At Marylebone, a ballet dancer was bailed for six months and good behaviour in 1849 for indecently assaulting and stealing a silk handkerchief from a clerk while dressed in women's clothes. The defendant's own counsel suggested this punishment after noting the foolishness of his client, who argued he dressed up as a joke. The focus of newspaper reporting largely concerned the circumstances of the theft rather than the sexual assault however, with a later edition saying that it was doubtful a jury would convict.⁵⁵

In contrast to cases with a sexual assault as the primary charge, when a sexual assault was secondary to another crime conviction occurred in all eight prosecutions that were heard at the Old Bailey. Most were for highway robbery, with one robbery, one extortion, and one case of wounding. The defendant in the latter was found guilty of the lesser offence of feloniously demanding money with menaces, and another was dropped from highway robbery to stealing.

The proportion of convictions indicates that committing both a sexual assault and robbery was viewed as particularly worthy of punishment. On the other hand, focus was mostly on the acts of robbery rather than the sexual assault, suggesting it was largely ignored, in favour of an ultimately more serious charge. Indeed, these charges predominated when a sexual assault was the tertiary driver of a prosecution, examined next.

Sexual assault as the tertiary driver of a prosecution

Attention now turns to prosecutions where a sexual assault was tertiary to the main charge, largely theft offences heard at the Old Bailey. To what extent did making an accusation of sexual assault aid the defence? Furthermore, can any sympathy be detected for defendants by the press, judges, or juries?

⁵⁵ *Lloyd's Weekly Newspaper*, 22 April 1849; 29 April 1829.

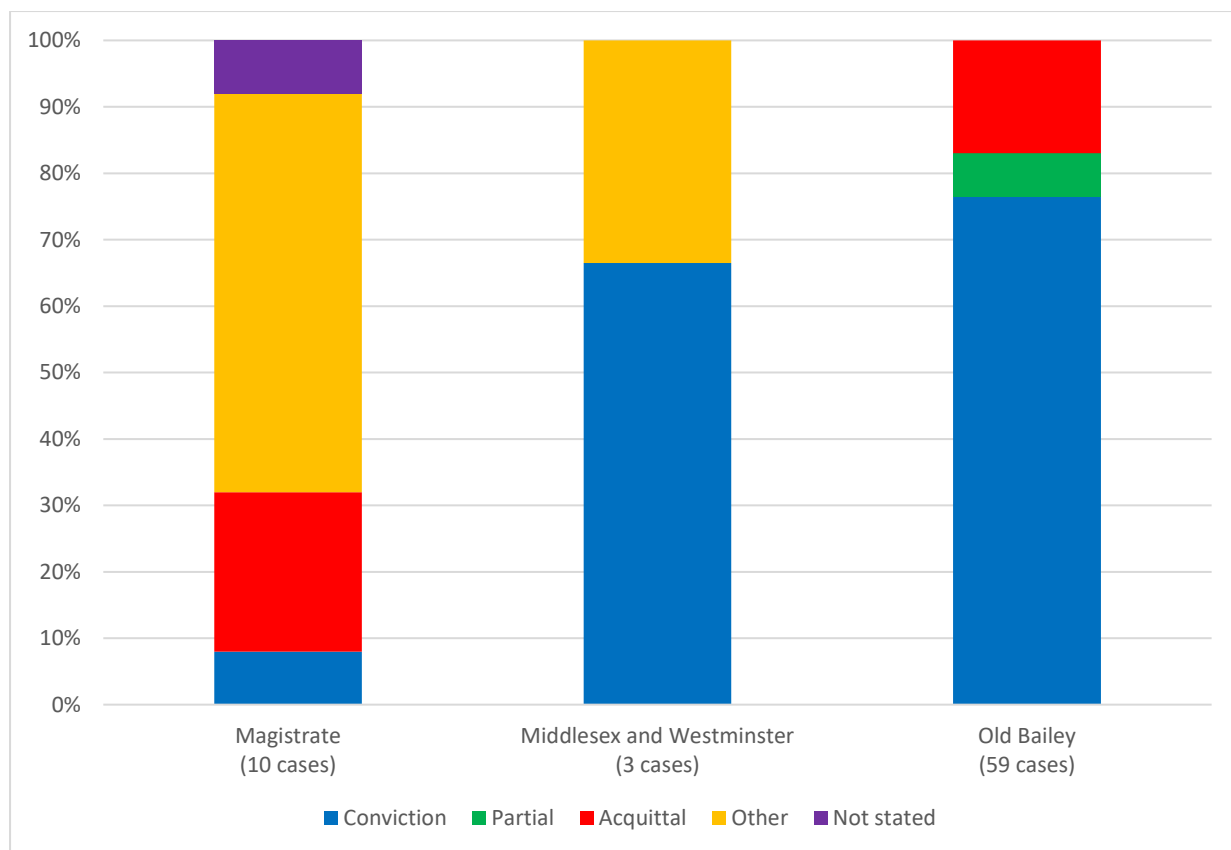


Figure 14 - Verdicts when sexual assault was the tertiary driver of a prosecution. Source: OBO (1761-1856); LMA, MJ/SP (1810); *The Times*, *Morning Post*, *Morning Chronicle* (1785-1854)

As with cases where a sexual assault was the primary charge, most prosecutions initially taken to magistrate courts were passed higher, and covered offences generally tried in such courts – mostly robbery and extortion. Hence, their passage through the criminal justice system is unsurprising. Even before they got there, there appears to have been little sympathy for defendants who made allegations of sexual assault to aid their defence. One extortionist was stated to be a ‘bad fellow’ by a magistrate of Bow Street in 1831, though perhaps being Italian also contributed to this characterisation.⁵⁶ Two years later at Hatton Garden, a sitting magistrate stated that indecency did not justify extortion, before sending the case higher.⁵⁷ Conversely, some sympathy can be detected by a magistrate at Marlborough Street in a charge of robbery; he questioned the prosecutor’s version of events.⁵⁸ Similarly, *The Times* noted how one man ‘foolishly gave money’ after being accused of ‘a most abominable offence’, staying silent on the extortionist.⁵⁹ Hence, there

⁵⁶ *Morning Post*, 19 January 1831.

⁵⁷ *Morning Post*, 27 November 1833.

⁵⁸ *The Times*, 31 October 1844.

⁵⁹ *The Times*, 30 July 1829.

appears to be little sympathy not only for defendants making accusations of sexual assault in their defence, but sometimes also for the actions of prosecutors, some of whom succumbed to extortionists' demands.

Only one defendant was summarily tried – a soldier convicted in 1785 at Guildhall for 'assaulting and imprisoning' an unnamed gentleman, whom he charged with committing an infamous crime on him. The report noted that his character was 'most dangerous', as he had extorted another man in the same way before. Hence, his previous character, as well as the sitting magistrate stating that there were several similar cases at the time, perhaps indicates that he wanted to make an example of the soldier.⁶⁰ Furthermore, a follow up report also noted that the prosecutor was eminent in the law, with his character perhaps also contributing to the decision to convict.⁶¹

Of the three cases uncovered for the Middlesex Sessions where a sexual assault was tertiary to the main charge, two men were convicted. Abraham Gardiner, prosecuted for extortion after accusing a man of sexual assault, was found guilty in 1810.⁶² The other case was uncovered in *The Times*, with the judge conversing with a soldier's sergeant on his character, concluding that he was a disgrace to his regiment after stealing a watch and accusing a man of sexual assault.⁶³

In contrast to the courts above, most prosecutions when a sexual assault was tertiary the main charge heard at the Old Bailey were for theft offences. Of these, full conviction was the most likely outcome, occurring in 77% of cases. Hence, it appears that making an accusation of sexual assault rarely aided the defence. Indeed, conviction predominated in all but one of the decades of study. Several cases contained corroborating evidence that went against the claims of defendants. One police officer overheard a defendant asking for more money for example, providing testimonial evidence of robbery.⁶⁴ In another, a witness stated he saw the prosecutor and defendant 'all very comfortable and friendly together'.⁶⁵

⁶⁰ *The Times*, 6 April 1785.

⁶¹ *The Times*, 11 April 1785.

⁶² LMA, briefs and instructions in case of Abraham Gardiner, June 1810 (MJ/SP/1810/06/003-004); TNA, Home Office: Criminal Registers, Middlesex, 1791-1849, 1810 (HO27/6); Newgate Prison Calendar, 1810 (HO77/17).

⁶³ *The Times*, 24 December 1847.

⁶⁴ OBP, trial of John Sylvester, September 1813 (t18130915-26).

⁶⁵ OBP, trial of William Fletcher and James Chittem, February 1841 (t18410201-645).

Previous character was also a factor in one case, with the jury asking whether one defendant had previously been in the 'black hole' of a ship.⁶⁶ In another, they commented that an accusation of sexual assault was 'totally without foundation', evidently disbelieving the defendant.⁶⁷ Hence, it appears that such accusations of sexual assault given in prosecutions for another charge at the Old Bailey rarely swayed juries. This is perhaps unsurprising given Shoemaker's argument that the *Proceedings* wished to communicate a sense of justice being done.⁶⁸

Several cases taken to the Old Bailey resulted in lesser verdicts, specifically in two theft and two harm offences. However, analysis of these cases suggest that certain circumstances resulted in these partial verdicts rather than belief that a sexual assault occurred. For instance, one wounding charge was dropped to assault; Christopher Conlan 'charged the prosecutor with having taken indecent liberties with him', before striking him. However, perhaps this verdict was given due to his age – fifty – as the claims of sexual assault were disproved by two witnesses, and a surgeon concluded the wound he gave was serious.⁶⁹ In another case, this time of murder, the lesser sentence of manslaughter was given – a regular occurrence in such prosecutions. For the two theft offences, one highway robbery prosecution resulted in the defendant found guilty for stealing but not robbery, and a robbery charge was lessened to assault.⁷⁰ In the latter, the defendant stated he suffered fits of derangement.⁷¹ In general then, extenuating circumstances appear more important in granting partial verdicts than any belief in accusations of sexual assault, at least in these few cases.

More cases resulted in acquittal than summary conviction at magistrate courts, though again, the amount of cases not passed higher are few. Guildhall acquitted a fireman in 1851 for threatening to accuse a man of indecently assaulting him in Fleet Street; the case was dismissed by the magistrate, after emphasising how intoxicated both parties were.⁷² At Southwark, a defendant's charge of sexual assault was believed by the magistrate, who

⁶⁶ *OBP*, trial of Daniel Hickman otherwise Hickins, July 1783 (t17830723-5).

⁶⁷ *OBP*, trial of William Risley, February 1855 (t18550226-349).

⁶⁸ Shoemaker, 'The Old Bailey Proceedings'.

⁶⁹ *OBP*, trial of Christopher Conlan, November 1838 (t18381126-95).

⁷⁰ *OBP*, trial of William Thompson, May 1792 (t17920523-49).

⁷¹ *OBP*, trial of Thomas Addy, September 1842 (t18420919-2606).

⁷² *Morning Post*, 14 August 1851.

acquitted him due to 'improper conduct' of the prosecutor to the surprise of his counsel, and in contrast to the case above where a magistrate stated that indecency did not justify extortion.⁷³ In this rare case, an accusation worked.

While no acquittals were given at the Middlesex and Westminster Sessions, ten have been uncovered for cases heard at the Old Bailey, though at a much lower proportion than convictions. In contrast to the newspaper reports above, the *Proceedings* is largely lacking in the reasons for acquittals in these cases. One prosecution in 1784 fell apart because the jury was astonished the prosecutor did not call for assistance when being robbed.⁷⁴ In another, thirty-nine years later, they questioned why the prosecutor went up a dark alley.⁷⁵ In these cases, the accusation of sexual assault appears less important than the actions of the prosecutors at the time of robbery. Indeed, arguably the actions of prosecutions implied something suspicious that might support an accusation of sexual assault.

At magistrate courts and the Middlesex and Westminster Sessions the number of cases uncovered with a sexual assault as the tertiary driver of a prosecution are small, with most prosecutions taken to the Old Bailey, suggesting how serious they were. As the predominance of convictions indicate, allegations of sexual assault rarely aided a defence, and there seems to have been little sympathy for defendants. Furthermore, partial verdicts and acquittals appear more to do with actions of the prosecutor rather than a belief that a sexual assault occurred, though occasionally some belief can be detected.

The prosecutions uncovered containing evidence of male on male sexual violence suggest important differences in how sexual assaults were dealt with by the courts. When a sexual assault was the main charge being prosecuted, passage to higher courts as well as conviction was more likely when heightened physical violence was involved, and especially the testimony of witnesses. Conversely, acquittals were more likely when witnesses commented on the familiarity of prosecutors and defendants, perhaps alluding to consensual relations. When a sexual assault was used to remove responsibility for another crime, there appears to have been little sympathy or belief by judges and juries in the

⁷³ *Morning Chronicle*, 3 August 1854.

⁷⁴ *OBP*, trial of Edward Greenwood, December 1784 (t17841208-188).

⁷⁵ *OBP*, trial of John Eagan, September 1823 (t18230910-78).

narratives of defendants. Indeed, acquittals seem to be more about the actions of prosecutors rather than a belief that a sexual assault occurred.

Did certain particulars affect sentencing?

The middle section of this chapter explores the assortment of sentences handed out to defendants. Courts had different punishments at their disposal: magistrate courts were able to inflict fines, corporeal punishment, and short terms of imprisonment; the Middlesex and Westminster Sessions had the power to impose longer terms of imprisonment and transportation; and the Old Bailey was able to punish convicts to all the above plus capital sentences. The following sections explore the impact of sexual assault on sentencing the importance of a sexual assault in securing certain punishments, and the reasons why.

Primarily sexual violence

Beginning with cases where sexual assaults were the primary charge, were harsher sentences given when there was heightened physical violence or witnesses?

The most common experience of the law in terms of punishment was summary justice.⁷⁶ A magistrate (or two in a 'petty session') had the power to impose penalties such as fines, whipping, or short terms of imprisonment in a House of Correction. This kind of justice was cheap and relatively inexpensive. The mid eighteenth century saw a shift towards a more judicial hearing at the summary courts.⁷⁷ At the same time, the number of offences to be tried summarily increased during the eighteenth century and even more into the nineteenth.⁷⁸ Magistrates exhibited a large amount of discretion in their duties. King has argued that many shared 'a very flexible attitude to what might be broadly called the rule of law'.⁷⁹ This trend continued into the mid nineteenth century, with Jervis's Act (1848) making the magistrates role 'akin to a preliminary judge'.⁸⁰

⁷⁶ David Taylor, *Crime, Policing and Punishment in England, 1750-1914* (Hampshire: Macmillan, 1998), 106–7.

⁷⁷ Taylor, 112.

⁷⁸ Emsley, *Crime and Society*, 13.

⁷⁹ Peter King, *Crime and the Law in England 1750–1840: Remaking Justice from the Margins* (Cambridge: Cambridge University Press, 2006), 55.

⁸⁰ Taylor, *Crime, Policing and Punishment*, 14.

	1770s	1780s	1790s	1800s	1810s	1820s	1830s	1840s	1850s	Total
Fine							1	2	6	9
Imprisonment					1					1
Pillory	1									1
Imprisonment and Fine		1							1	2
Imprisonment and Pillory	3									3
Not Stated	1	1								2
Total	5	2			1		1	2	7	18

Figure 15 - Sentences at magistrate courts when a sexual assault was the primary charge. Source: LMA, MJ/SP (1768-1836), OB/SP (1786), WJ/SP (1827); The Times, Morning Post, Morning Chronicle, Lloyd's Weekly Newspaper, Reynolds's Weekly Newspaper (1772-1860)

As can be seen in Figure 15, summary conviction resulted in a variety of sentences which magistrate courts had the power to impose: corporeal punishment, fines, and short terms of imprisonment. Furthermore, the latter were variously sentenced on their own and with combinations of the others. Imprisonment both as an alternative to transportation and punishment in its own right became popular throughout the period and expanded significantly. Local prisons held the most inmates for much of the period.⁸¹ The late eighteenth century saw a rising prison population, with overcrowding a major issue. This and the fear of disease were the main contributors to the decision to reform prisons.⁸² Gilberts Act of 1782 ordered the separation of prisoners by age and sex, as well as the classification of criminals to avoid 'contamination' of the less guilty, though it did not enforce this separation. A report released the following year proposed the extension of

⁸¹ Barry S. Godfrey and Paul Lawrence, *Crime and Justice, 1750-1950* (Cullompton, U.K: Willan, 2005), 105.

⁸² Margaret DeLacy, *Prison Reform in Lancashire: 1700-1850: A Study in Local Administration* (Manchester: Manchester University Press, 1986), 93–94.

Gilberts Act so that prisoners should not share beds, and the confinement of felons in separate cells.⁸³ This system was being promoted by reformers as early as the 1770s.⁸⁴

The length of terms of imprisonment uncovered tended to be a year or less and combined with time in the pillory. For instance, in the late 1770s, two men were given twelve months imprisonment with a spell in the pillory, both given at Guildhall for attempted sodomy.⁸⁵

Only one man was sentenced to this corporal punishment on its own; an unnamed perpetrator received it for the same offence, again by the Guildhall magistrate in 1779.⁸⁶

The same court gave the longest incarceration time: two years with security for good behaviour to Charles Mosley, after committing an indecent assault outside a print shop window in Cheapside in 1811.⁸⁷ Unfortunately, these reports contained little detail on the level of physical violence, but appear to be for sexual touching rather than forced penetration.

As stated in the previous section, summary conviction appeared most often in prosecutions for sexual assaults that did not contain witnesses. The most common punishment reported in newspaper articles was a fine of 5l, which was given on its own in exactly half of guilty verdicts, with all but one for indecent assaults. Several courts handed it out, signalling that this fine was standard for this offence. Thomas Strange was given this fine and bailed for his next trial for indecent assault in 1855, potentially doubling his losses if it resulted in a guilty verdict too.⁸⁸ It might also be combined with short term imprisonment; five years previously, an unnamed man was given this fine with the addition of two months imprisonment and two sureties for good behaviour for an indecent assault in a public house by Mansion House, with the magistrate noting that such 'disgraceful acts must be suppressed', perhaps resulting in this additional punishment.⁸⁹ Overall, this fine of 5l became the average punishment by the end of the period under study when defendants were summarily convicted.

⁸³ DeLacy, 77.

⁸⁴ William J. Forsythe, *The Reform of Prisoners 1830-1900* (London: Croom Helm, 1987), 19.

⁸⁵ *Morning Post*, 3 December 1776 and 23 February 1778.

⁸⁶ *Morning Chronicle*, 11 August 1779.

⁸⁷ *Morning Post*, 2 April 1811.

⁸⁸ *The Times*, 2 August 1855. Unfortunately, the outcome of this second trial is unknown.

⁸⁹ *The Times*, 23 July 1850.

Due to a lack of detail, it cannot be ascertained whether heightened violence contributed to harsher sentences when defendants were summarily convicted. But, as stated previously, it is likely that cases containing more physical violence were passed to higher courts.

Furthermore, summary conviction was mostly the outcome when prosecutions lacked witnesses. As such, physical violence and witnesses do not appear to have resulted in harsher sentences given by magistrate courts, which largely depended on the standard sentencing patterns of the time: terms of imprisonment up to six months (longer than this was unusual), and/or the pillory in the late eighteenth century, until fines became more popular in the mid-nineteenth century.

	1820s	1830s	1840s	1850s	Total
Imprisonment: 6 weeks		1			1
Imprisonment: 6 months	5	2		1	8
Imprisonment: 9 months			1		1
Imprisonment: 12 months	1	2			3
Imprisonment: 18 months		1			1
Imprisonment: 2 years		1			1
Not Stated	2				2
Total	8	7	1	1	17

Figure 16 - Sentences at the Middlesex and Westminster Sessions when a sexual assault was the primary charge. Source: LMA, MJ/SP (1768-1836), OB/SP (1786), WJ/SP (1827); The Times, Morning Post, Morning Chronicle, Lloyd's Weekly Newspaper, Reynolds's Weekly Newspaper (1772-1860)

As a higher court the Middlesex and Westminster Sessions could impose longer terms of imprisonment, though in cases where the sexual assault was the primary charge the punishments given were typically terms of imprisonment for less than a year. The expansion of the prison system has been investigated from a variety of differing perspectives. It has been noted that the belief in reform was sometimes advocated in the punishment of

crime.⁹⁰ However, there was a gap between conceptions of reform and reality. Some historians have focused on the coercive and social control aspect of prisons.⁹¹ Others have noted the messiness and lack of clear development in the prison regime, and how prison reform was part of more general reform.⁹² Willis though, saw the gradual rise of penal apparatus due to nineteenth century centralisation and bureaucratisation, though this necessitated social change, especially through the ideas of equality and democracy.⁹³ In any case, by the mid-nineteenth century 'prisons were more thoroughly regulated than ever before'.⁹⁴

Judging by the amount of detail in examinations and newspaper reports, the level of violence only sometimes contributed to lengthier terms of imprisonment. The longest was two years, the maximum term of imprisonment available, given to Daniel Malcolm for an indecent assault, with the jury stating that he should have been capitally tried, perhaps due to the violence involved.⁹⁵ However, other cases which contained forced penetration did not receive longer sentences, even those containing corroborating evidence. For instance, Henry Godbold testified that a man 'pushed hard against me and his private parts went into my bottom a little way', but the perpetrator received six months, despite two witnesses seeing the assault.⁹⁶ Upchurch noted that this term had stabilised as the standard sentence for attempted sodomy during this decade, and indeed it was most commonly given in the cases uncovered.⁹⁷ Remarkably, two Frenchmen were explicitly given a lesser sentence of six months imprisonment due to 'ignorance of English language and customs', despite 'acts of brutality'.⁹⁸

⁹⁰ Godfrey and Lawrence, *Crime and Justice*; Taylor, *Crime, Policing and Punishment*, 124.

⁹¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (London: Penguin, 1979); Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Columbia University Press, 1978).

⁹² DeLacy, *Prison Reform in Lancashire*; Richard Ireland, 'A Want of Order and Good Discipline': *Rules, Discretion and the Victorian Prison* (Cardiff: University of Wales Press, 2007).

⁹³ James J. Willis, 'Transportation versus Imprisonment in Eighteenth- and Nineteenth-Century Britain: Penal Power, Liberty, and the State', *Law & Society Review* 39, no. 1 (2005): 171–210.

⁹⁴ Seán McConville, *A History of English Prison Administration. Volume 1: 1750-1877* (London: Routledge & Kegan Paul Ltd, 1981), 259.

⁹⁵ *The Times*, 25 June 1833.

⁹⁶ LMA, information of Henry Godbold, 23 December 1826 (MJ/SP/1827/01/074).

⁹⁷ Upchurch, *Before Wilde*, 94.

⁹⁸ *Morning Chronicle*, 12 January 1829.

Another attempted forced penetration case resulted in twelve months imprisonment, with a witness testifying that the perpetrator had attempted to previously get into his bed.⁹⁹ However, other cases which resulted in terms of six or twelve months appear to have contained less violence and witnesses. Indeed, the presence or lack of witnesses appears to have had haphazard impact. Just six weeks was given to a pauper who sexually assaulted another in Bethnall Green workhouse; but which no one saw as the prosecutor did not wish to call out and wake others up.¹⁰⁰ On the other hand, William Allum was given six months for sexually assaulting four men, two of whom were lawyers, signalling a class influence.¹⁰¹ Hence, the level of violence or presence of witnesses does not always appear to have resulted in longer terms of imprisonment.

Character appears to have made some impact. In a case which resulted in six months for the perpetrator, which contained sexual touching and no witnesses, the defendant received good character, though perhaps being 'elderly' also contributed to this sentence. In another, the jury explicitly stated they wished the defendant was someone else.¹⁰² Moreover, the longer sentence of eighteen months was given by a magistrate who argued that seduction of the innocent was worse than consensual relations, perhaps wishing to make an example of the perpetrator.¹⁰³

Therefore, at the Middlesex and Westminster Sessions, heightened physical violence and the presence of witnesses did not appear to have systemically resulted in harsher sentences, with the evidence suggesting that character or the actions of magistrates were perhaps more important in deciding the length of prison terms.

	1760s	1770s	1780s	1790s	1800s	1810s	1820s	1830s	1840s	1850s	Total
Death	1	1		1							3
Imprisonment			1					1	2	1	5

⁹⁹ LMA, information of Robert Jervins et al, 18 May 1833 (MJ/SP/1833/05/051).

¹⁰⁰ LMA, information of George Peterson et al, 17 October 1831 (MJ/SP/1831/10/009).

¹⁰¹ LMA, information of John Ling et al, 7 January 1829 (MJ/SP/1829/01/037).

¹⁰² *The Times*, 13 April 1830.

¹⁰³ *Morning Chronicle*, 8 January 1834.

Death Recorded									1		1
Total	1	1	1	1				1	3	1	9

Figure 17 - Sentences at the Old Bailey when sexual assault was the primary charge. Source: LMA, MJ/SP (1768-1836), OB/SP (1786), WJ/SP (1827); The Times, Morning Post, Morning Chronicle, Lloyd's Weekly Newspaper, Reynolds's Weekly Newspaper (1772-1860)

As can be seen in Figure 17 above, the Old Bailey had the power to inflict capital punishment. It was seen as a fitting punishment for those who threatened the social order.¹⁰⁴ The death penalty was retributive and meant to deter others from offending. Execution usually occurred by hanging from the mid-eighteenth century.¹⁰⁵ Previous bad character or criminal actions, along with the use violence and highway robbery increased the likelihood of being hanged.¹⁰⁶ The number of crimes which carried the death penalty increased at the beginning of the period under study, then decreased dramatically. While at the beginning of the seventeenth century fifty crimes were capital, there were over two hundred by 1815 due to doubling up of offences in statute books.¹⁰⁷

In cases where sexual assault was the primary charge heard at the Old Bailey, heightened physical violence appears to have contributed to harsher sentences. For instance, Thomas Andrews was given a capital sentence. In his trial the prosecutor had, importantly, provided tangible evidence necessary for conviction. He was examined by multiple surgeons to certify he had been penetrated, and also a stained shirt was examined for evidence of semen.¹⁰⁸ While he was one of four men given a capital sentence in the cases uncovered, the other reports do not contain the necessary detail to identify a similar level of violence or evidence. However, one defendant convicted of attempted forced penetration was given imprisonment for three years with public whipping twice in 1785, the longest sentence of imprisonment uncovered for this type of prosecution at the Old Bailey.¹⁰⁹ Furthermore, according to the *Proceedings*, Sweetman was the only person to be given a singular sentence of whipping for a sexual offence in the period under study. Whipping was public

¹⁰⁴ Taylor, *Crime, Policing and Punishment*, 126.
¹⁰⁵ Emsley, *Crime and Society*, 254.
¹⁰⁶ Taylor, *Crime, Policing and Punishment*, 129.
¹⁰⁷ John Briggs et al., *Crime and Punishment in England: An Introductory History* (London: UCL Press, 1996), 61.
¹⁰⁸ *OBP*, trial of Thomas Andrews, May 1761 (t17610506-23).
¹⁰⁹ *OBP*, trial of Roger Sweetman, September 1785 (t17850914-164).

until the mid-eighteenth century, thereafter, usually taking place in private.¹¹⁰ However, public whippings continued to be ordered until the end of the century, especially from quarter sessions.¹¹¹ Therefore, his crime was perceived as particularly heinous. Furthermore, unlike the former forced penetration case, it appears that he was convicted of the misdemeanour rather than the felony despite a similar level of physical violence due to a lack of corroborating evidence.

Shorter terms of imprisonment were given in cases of sexual touching but which had a lack of witnesses. Twelve months was handed to a 24 year old porter who received a good character and was recommended to mercy by the jury.¹¹² A sexual assault on a steamer which opened this thesis resulted in a longer two year sentence for customs officer David Burton, with multiple sailors testifying against him. On the other hand, the shortest was six months handed to a man who pleaded guilty to common assault, after being charged with indecent assault by two policemen.¹¹³

As such, defendants in cases heard at the Old Bailey who committed heightened physical violence were more likely to receive severer sentences. Furthermore, the presence of witnesses also contributed to harsher sentences, with other circumstances such as character or physical evidence of assault also assuming importance.

Sentences at more unique courts conformed to sentencing practices of magistrate courts. For example, the single guilty verdict handed out at the Queen's Bench resulted in a twelve month stretch of imprisonment in a House of Correction with hard labour for William Hunter, after indecently assaulting a chemist in Brunswick-Square in 1853. A witness was involved in a trap to catch the perpetrator, but did not see any indecency occur.¹¹⁴ The following year, the Court of Common Pleas gave out a 5l fine; again, a witness did not see the specific assault take place.¹¹⁵

¹¹⁰ Emsley, *Crime and Society*, 254.

¹¹¹ John M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton: Princeton University Press, 1986), 461.

¹¹² *The Times*, 5 February 1853; *OBP*, trial of Joseph Hanyours, January 1853 (t18530131-308).

¹¹³ *The Times*, 3 February 1849; *OBP*, trial of Walter Smith, January 1849 (t18490129-535).

¹¹⁴ *The Times*, 8 February 1853.

¹¹⁵ *Morning Post*, 30 May 1854.

The importance of physical violence and the presence of witnesses differed depending on the court. At magistrate courts, these particulars do not appear to have had an impact on sentencing, as most prosecutions which contained them were sent higher. At the Middlesex and Westminster Sessions, cases with more violence and/or witnesses received the severest punishments, though at other times resulted in the same sentences as those which did not. Furthermore, the evidence suggests that character and the decisions of magistrates had impact, which was also the case at the Old Bailey. Unlike the other courts however, cases containing greater levels of physical violence tended to receive the most severe punishments, with lesser sentences in those with fewer witnesses or less corroborating evidence.

Sexual assault and robbery

The next set of cases to be examined are those with a sexual assault as the secondary charge. Did prosecutions for non-sexual offences where the prosecutor stated the defendant both robbed and sexually assaulted them result in additional punishment? All convictions uncovered were given at the Old Bailey, with all but one for a theft offence.

	1760s	1770s	1780s	1790s	1800s	1810s	1820s	1830s	1840s	1850s	Total
Death	1	2		1							4
Imprisonment									2		2
Transportation					1					1	2
Total	1	2		1	1				2	1	8

*Figure 18 - Sentences at the Old Bailey when a sexual assault was the secondary charge.
Source: OBO (1763-1850); Morning Post, Lloyd's Weekly Newspaper (1842-1849)*

The evidence suggests that when a sexual assault was secondary to the main charge, it made no difference to sentencing. Death sentences were the most frequent given, in all eighteenth-century prosecutions for highway robbery that were preceded by a sexual assault. However, it was also common in cases where it was the primary charge, along with terms of imprisonment. Two men received two and three years, respectively, for feloniously

demanding money with menaces, and two others were handed transportation. However, these sentences match patterns at the Old Bailey in cases when it was the primary charge, suggesting that sexual assaults made little impact in cases where it was a secondary charge. As suggested before, it appears that it was largely ignored in favour of focusing on the main, non-sexual, charge.

Sexual violence as a defence tactic

Last explored are prosecutions where a sexual assault was the tertiary charge, with the majority taken to the Old Bailey. Did convicts receive lighter punishments? Was there any sympathy for men who claimed that a prosecutor had sexually assaulted them?

Few tertiary cases have been uncovered for magistrate courts, and only one resulted in summary conviction. The sentence given was severe, however. Five years imprisonment along with time in the pillory was handed to Richard Hope by Guildhall in 1785.¹¹⁶ Uniquely, this is the longest sentence of imprisonment uncovered for a magistrate court by multiple years – especially unusual as the maximum is meant to be two years – indicating the power a false accusation of sexual assault had on sentencing decisions.

Similarly, few tertiary cases have been uncovered at the Middlesex and Westminster Sessions, with only two convictions. Abraham Gardiner received seven years transportation for extortion, the severest sentence of this kind uncovered for these Sessions, indicating, again, the power of magistrates' abhorrence of false accusations. Transportation involved sending prisoners to other parts of the world to use their labour. Seven years was quickly established as the shortest sentence length, to a maximum of life, and it was popular due to its cheapness.¹¹⁷

Transportation to the Americas was common during the eighteenth century following the Transportation Act of 1717, though ended in the 1770s with the American Revolution. Alternative settlements were sought, including West Africa.¹¹⁸ However, the majority of convicts in the period under study were transported to Australia, which remained the most

¹¹⁶ *The Times*, 6 April 1785; 11 April 1785; 10 April 1786.

¹¹⁷ Hamish Maxwell-Stewart, 'Convict Transportation from Britain and Ireland 1615–1870', *History Compass* 8, no. 11 (2010): 1223.

¹¹⁸ Emma Christopher, *A Merciless Place: The Lost Story of Britain's Convict Disaster in Africa* (Oxford: Oxford University Press, 2011).

recurrently used destination throughout the entire period. It began in 1787 when the first 778 convicts were sent to Botany Bay.¹¹⁹ Transportation has been seen as a middle ground between execution and corporeal punishment.¹²⁰ As convicts were to be pardoned in return for a commutation of their death sentences to transportation, Taylor deduces that royal mercy 'could be shown without unnecessarily endangering society'.¹²¹ At the same time, convict labour was useful in establishing and maintaining settlements abroad. This transportation system has been seen by some as slavery, though others have critiqued this is too simplistic.¹²²

In another tertiary case at the Middlesex and Westminster Sessions twelve months imprisonment was handed to a soldier who had stolen a watch and sworn indecent liberties against the prosecutor in his defence. The report contained a detailed speech by the judge on whether to inflict transportation, commenting that the soldier was not only a disgrace to his regiment but also human nature for falsely accusing a respectable man of 'the foulest and most disgusting offence'. Despite this, the judge decided on twelve months imprisonment with hard labour, hoping he would come out of prison reformed.¹²³ While the sentence given indicates some level of sympathy for the soldier in comparison to the case that resulted in transportation, the comments of the judge demonstrate that allegations of sexual assault in defences were viewed as particularly heinous.

	1760s	1770s	1780s	1790s	1800s	1810s	1820s	1830s	1840s	1850s	Total
Death	1	3	3	3	3	4	1	1			19
Transportation			1	1		1	1	4	8	4	20
Imprisonment						1		1	4	1	7
Imprisonment and Other	1		1								2
Deferred/Respited									1		1

¹¹⁹ Godfrey and Lawrence, *Crime and Justice*, 73.

¹²⁰ Emsley, *Crime and Society*, 187.

¹²¹ Taylor, *Crime, Policing and Punishment*, 142.

¹²² Maxwell-Stewart, 'Convict Transportation from Britain and Ireland', 1234.

¹²³ *The Times*, 24 December 1847

Total	2	3	5	4	3	6	2	6	13	5	49
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Figure 19 - Sentences at the Old Bailey when a sexual assault was the tertiary charge. Source: OBO (1761-1856); LMA, MJ/SP (1810); The Times, Morning Post, Morning Chronicle (1785-1854)

As is demonstrated by Figure 19, a much higher proportion of prosecutions heard at the Old Bailey have been categorised as tertiary cases, which covered largely theft but also several harm offences. As in those where a sexual assault was the primary or secondary charge, a high proportion resulted in death sentences, indicating that there was little sympathy for defendants who attempted to absolve responsibility for another crime by accusing a prosecutor of sexual assault. However, the last death sentence found in the cases uncovered here was for a robbery committed in 1832, despite the prosecutor and jury sending several letters pleading for the defendant's life to be spared.¹²⁴

Nevertheless, these declarations appear more to do with general sympathy for men condemned to die on the gallows than due to the defence tactic employed. Indeed, this case can be compared with the final executions for (consensual) sodomy which took place three years later. Two men were hanged in spite of the magistrate's protestations, which included sending a letter to the Home Secretary arguing for a commutation of their death sentences.¹²⁵ In most cases that resulted in death sentences, there appeared to be little sympathy for defendants who used this tactic. By the early 1840s offences had been rationalised and those which carried a capital sanction reduced to seven, and then to four by the early 1860s, though by this time in practice only murderers were hanged.¹²⁶

Transportation was the most frequent sentence uncovered in tertiary cases of sexual violence between men at the Old Bailey. From the cases collected here, it appears that lower lengths were favoured in the decades surrounding the turn of the nineteenth century, with longer lengths preferred towards the mid-century. One man received seven years after being found guilty for the lesser offence of stealing in 1792.¹²⁷ Another was given it for

¹²⁴ TNA, Home Office: Criminal Petitions: Series I, 1832-1833 (HO17/89/QR2).

¹²⁵ See Dominic Janes, 'Regarding Pratt and Smith, the Last Couple of Sodomites to Be Hanged in Britain', in *From Sodomy Laws to Same-Sex Marriage: International Perspectives since 1789*, ed. Sean Brady and Mark Seymour (London: Bloomsbury Academic, 2019).

¹²⁶ Taylor, *Crime, Policing and Punishment*, 131; David Bentley, *English Criminal Justice* (London: Hambledon, 1998), 12.

¹²⁷ OBP, trial of William Thompson, May 1792 (t17920523-49).

robbery, despite having a former conviction. Perhaps being only twenty years old contributed.¹²⁸ Most of the time, defendants with previous convictions meant they were given longer terms. For instance, two men were given twenty and twenty-five years for extortions in the 1850s.¹²⁹ Therefore, longer terms were generally handed out when defendants had been convicted before.

During the mid-nineteenth century opposition to transportation as a punishment gained traction, not least from the settlements who received convicts. Claims of rampant unnatural crime were used by proponents of the abolition of transportation to bring about its end, especially concerning the convict prison on Norfolk Island where only men were sent, resulting in largely homosocial spaces, playing into a rise in fears of sexual relations, especially due to these men being from the lower classes, thought to have less control over their passions. This anti-sodomy discourse was central to abolitionist rhetoric, though it was probably overblown.¹³⁰ Over time, transportation was seen by some as moral pollution, or harming 'free' citizens. At the same time, it was stated that transportation was inefficient in deterring crime. A Select Committee chaired by Lord Molesworth dwelt on these issues, though it was not as important in bringing about its end as previously believed.¹³¹ Sentences of transportation officially ended in 1857, though by this time a number of cases which contained allegations of sexual assault in a defence had it as its outcome.

What about sentences of imprisonment? Towards the earlier decades of the period, imprisonment was often combined with corporeal or monetary punishments, as seen in discussion of magistrate courts above. For instance, William Bailey received a term of six months with standing once in the pillory and a fine of 40 shillings in 1761.¹³² Two decades later in 1786 William Trott, the alleged victim of repeated kissing and convicted of manslaughter, was given three months imprisonment with a fine of 6 shillings and 8 pence.

¹²⁸ *OBP*, trial of George Webb, August 1846 (t18460817-1636).

¹²⁹ *OBP*, trial of Joseph Braznell and John Wren, September 1850 (t18500916-1589); trial of William Risley, February 1855 (t18550226-349).

¹³⁰ See Tim Causer, 'Anti-Transportation, "Unnatural Crime", and the "Horrors" of Norfolk Island', *Journal of Australian Colonial History* 14 (2012): 230–40; For an argument which downplays its importance, see Alison Alexander, *Tasmania's Convicts: How Felons Built a Free Society* (Crows Nest, New South Wales: Allen & Unwin, 2010).

¹³¹ John Ritchie, 'Towards Ending an Unclean Thing: The Molesworth Committee and the Abolition of Transportation to New South Wales, 1837-40', *Historical Studies* 17, no. 67 (1976): 144–64.

¹³² *OBP*, trial of William Bailey, October 1761 (t17611021-35).

Taking other cases of murder reduced to manslaughter in this decade shows that this term of imprisonment was on the lower end as punishments increased to a year, although the fine was one of the largest imposed. Perhaps the accusation of sexual assault resulted in this additional fine, or that the unwanted kissing was the provocation for the assault, resulting in a shorter term of imprisonment made up in part by the fine.¹³³

As with transportation, differing lengths of imprisonment appear to be due to additional circumstances rather than sympathy for defendants. For instance, two men received twelve months after receiving recommendations for mercy after being sentenced to death. One of them testified that he suffered 'temporary fits of derangement', suggesting this as the reason for mercy.¹³⁴ Again, longer terms were sometimes given to men with previous convictions: James Button received two years, and during the prosecution two policemen 'knew the prisoner to be the associate of convicted thieves'.¹³⁵

The latter end of the period saw the beginnings of a move away from transportation to penal servitude. British convict prisons were increasing their capacities from the 1840s and especially the 1850s, anticipating an end to transportation.¹³⁶ It became increasingly costly, especially from the mid-1850s, and was cheaper to keep criminals imprisoned at home.¹³⁷ In 1853 an Act placed penal servitude (i.e. long term imprisonment) alongside transportation as a sentence, and another in 1857 abolished transportation (though retained the option of sending men sentenced to penal servitude overseas).¹³⁸ The final case taken from the Old Bailey was prosecuted the year before this latter act, and resulted in the only term of penal servitude for life given, for extortion.¹³⁹

The number of death sentences in tertiary cases indicates there was little sympathy for men who attempted to use accusations of sexual assault in their defence. Furthermore, lengths of transportation or penal servitude for life appear to have been given not due to belief in accusations of sexual assault by defendants but other circumstances, such as age or

¹³³ *OBP*, trial of Robert Clark, December 1786 (t17861213-107).

¹³⁴ *OBP*, trial of Thomas Addy, September 1842 (t18420919-2606).

¹³⁵ *OBP*, trial of James Button, August 1846 (t18460817-1584).

¹³⁶ Barry Godfrey, 'Prison Versus Western Australia: Which Worked Best, the Australian Penal Colony or the English Convict Prison System?', *The British Journal of Criminology* 59, no. 5 (2019): 1144.

¹³⁷ Helen Johnston, *Crime in England 1815-1880: Experiencing the Criminal Justice System* (Oxon: Routledge, 2015), 105.

¹³⁸ *Penal Servitude Act*, 16 & 17 Vict. c.99 (1853); 20 & 21 Vict. c.3 (1857).

¹³⁹ *OBP*, trial of James Williamson, August 1856 (t18560818-785).

previous convictions. Indeed, a number of factors affected sentences for imprisonment or transportation, such as 'age and gender of the defendant, gender and status of the victim, number of previous convictions, socio-political or moral preoccupations of the sentencing Judge and so on', according to Godfrey.¹⁴⁰ In tertiary prosecutions uncovered for the Old Bailey, the evidence suggests that these particulars were more important than accusations of sexual assault used as a defence tactic.

Analysis of the evidence suggests important differences in sentencing patterns at the courts depending on the type of prosecution. While heightened physical violence and the presence of witnesses assumed little importance in cases when a sexual assault was the primary charge at magistrate courts, cases uncovered for the Middlesex and Westminster Sessions show it had sometimes resulted in the most severe sentences, though not in every case. At the Old Bailey, these were the cases most likely to result in the harshest sentences. When a sexual assault was secondary to another charge, it appears to have been largely ignored in favour of the main offence. When it was used as a defence tactic by defendants, little sympathy or belief in accusations of sexual assault can be detected. Lighter or harsher punishments appear to be more to do with other circumstances such as age or previous convictions.

The final part of this chapter explores whether these sentences were carried through.

Were defendants treated differently from the norm in terms of post-trial outcomes?

This final section will demonstrate that sentences given by courts in cases involving sexual violence between men were not necessarily followed through, and explore the differences in post-trial outcomes depending on whether a sexual assault was the primary, secondary, or tertiary driver of a prosecution. Did the specific particulars examined so far throughout this chapter affect what happened to convicted men post-trial?

Pardons performed an important function in the machine of criminal justice, and in the cases below freedom was occasionally given, though more commonly commutations of

¹⁴⁰ Godfrey, 'Prison Versus Western Australia', 1141.

death sentences in favour of transportation instead. Alternatively, some men were imprisoned or had their sentences respited, with even more outcomes possible. As with the above, post-trial information has been provided by several online databases.¹⁴¹ Prison records and criminal registers hosted online have been especially fruitful in finding out what happened post trial; in some instances there are dozens of documents pertaining to a specific case. These outcomes have been compared with the sentences given, to see how often they matched what actually occurred post-trial.

Due to the larger amount of availability of post-trial data collected for the Old Bailey, this section will focus largely on outcomes at this higher court. Indeed, different outcomes have only been uncovered twice at other courts, both after receiving sentences of twelve months imprisonment for indecent assault – when a sexual assault was the primary driver of a prosecution. For instance, one man convicted at the Middlesex and Westminster Sessions was subsequently removed to a lunatic asylum in 1833.¹⁴² In a conviction at the Queen's Bench twenty years later, another man had 'taken refuge in France' to avoid the sentence, as revealed in a letter from then Home Secretary Palmerston.¹⁴³ Notably, these were the only prosecutions where an alternative outcome to a sentence was found at courts other than the Old Bailey.

As has been seen, at the Old Bailey death was one of the most frequently given sentences, but many executions were not carried out. Indeed, considering all the evidence uncovered, only 35% of defendants in the sample used in this thesis that were given a sentence of death were hanged. Hence, any analysis of the *Proceedings* and newspaper reporting must consider the outcomes of cases, especially as much of it is digitally available.¹⁴⁴ Several questions are asked: first, how many men were actually executed? Second, were men convicted in offences involving sexual violence treated differently than the norm? Third, were there differences between cases where a sexual assault was the primary, secondary, or tertiary driver of a prosecution?

¹⁴¹ See Chapter One, 33-35.

¹⁴² TNA, Correspondence and Warrants, 4 September 1833 (HO13/63/208).

¹⁴³ TNA, Correspondence and Warrants, 12 April 1854 (HO13/103/228).

¹⁴⁴ On a recent misuse of the *Proceedings* in regards to executions for sodomy, see 'From the Editor's Desk: Outrages', *The American Historical Review* 124, no. 4 (2019): xiv–xvii.

This following section owes much to the recent work of Simon Devereaux on executions and pardons at the Old Bailey.¹⁴⁵ His data is used in conjunction with outcomes collected from the digital tools mentioned earlier to see how often sentences given in an Old Bailey trial differed with the actual outcome of a case, in relation to sexual violence committed against men.

When sexual assault was the primary charge

When a sexual assault was the primary driver of a prosecution, capital sentences were given in three cases, all for sodomy. However, only one was carried out (33%); the prosecutor was locked in a room and stated several men ‘began kissing me, and used me very ill’.¹⁴⁶ In the earliest case uncovered in this thesis from its opening year, the perpetrator of a forced penetration committed in a lodging house was granted a free pardon and released two months after his trial for sodomy, the only case with a sexual assault as the primary driver of a prosecution where this occurred.¹⁴⁷ The records give no indication of the rationale for his release, though perhaps his status as a victualler or lobbying by his friends and family influenced the decision, given the testimony of multiple surgeons and witnesses against him.¹⁴⁸ In the final case, heard in 1797, William Winklin was spared death in favour of seven years imprisonment and sureties of more than £500 for life. While the reports omit the detail on the degree of violence, perhaps being 22 years old contributed, along with the growing sympathy for men condemned to die.¹⁴⁹

Judging from these few prosecutions, the degree of violence and presence of witnesses had no impact on post-trial outcomes, although the number of cases uncovered makes hypothesising impossible. At the least, they suggest the importance of other factors such as age and character in determining separate post-trial outcomes.

¹⁴⁵ Simon Devereaux, ‘The Bloodiest Code: Counting Executions and Pardons at the Old Bailey, 1730-1837’, *Law, Crime and History* 6, no. 1 (2016): 1–36; ‘Execution and Pardon at the Old Bailey 1730-1837’, *American Journal of Legal History* 57, no. 4 (2017): 447–94.

¹⁴⁶ *OBP*, trial of Thomas Burrows, December 1776 (t17761204-2).

¹⁴⁷ *TNA*, Secretaries of State, State Papers, 29 July 1761 (SP 44/87/34-35).

¹⁴⁸ This case is discussed in more detail in Chapter Five, 135-136.

¹⁴⁹ *OBP*, trial of William Winklin, February 1797 (t17970215-46); *TNA*, Home Office: Criminal Registers, Middlesex, 1791-1849, 18 June 1797 (HO26/5).

Sexual assault as the secondary offence

On the other hand, three of the four death sentences given when a sexual assault was secondary were carried out (75%). All were for highway robbery, with the theft committed after a sexual assault. One defendant had been pardoned for a robbery in the same manner four years previously, which the *Proceedings* briefly summarised.¹⁵⁰ He was not so lucky this time, and his previous conviction may have sealed his fate. The only time a hanging was not followed through still resulted in an unfortunate outcome for the defendant, however.

William William's sentence was respited as he was recommended to mercy in 1770, perhaps due to receiving a good character from multiple witnesses. However, four months later he died in Newgate.¹⁵¹ This was probably from 'gaol fever' (typhus), as many others did in the overcrowded prison at this time.¹⁵²

As expected, all these executions occurred in the late eighteenth century. Again, low numbers make an analysis difficult, and the high proportion of executions appear to indicate a motivation to punish theft rather than sexual assault, with other circumstances such as previous convictions and character impacting whether an execution was carried out or not.

Sexual violence alleged in a defence

As stated, analysis of post-trial outcomes rests largely on tertiary cases, as a larger number of cases were collected. The proportion of men executed was lower than for other types of prosecution, specifically five of nineteen (26%). In contrast to the prosecutions explored above, a much greater variety of outcomes has been uncovered.

In total, almost 10,000 people were capitally convicted between 1730-1837.¹⁵³ The decision to hang or to pardon a capital convict happened at a meeting of the monarch and senior government ministers, in what came to be known as the Recorder's Report.¹⁵⁴ From the 1760s, this report convened shortly after each session at the Old Bailey, with executions

¹⁵⁰ *OBP*, trial of James Brown, September 1763 (t17630914-52).

¹⁵¹ *Public Advertiser*, 6 February 1771.

¹⁵² Devereaux, 'The Bloodiest Code', 34.

¹⁵³ Devereaux, 1.

¹⁵⁴ For a history, see Simon Devereaux, 'Peel, Pardon and Punishment: The Recorder's Report Revisited', in *Penal Practice and Culture, 1500–1900: Punishing the English*, ed. Simon Devereaux and Paul Griffiths (London: Palgrave Macmillan UK, 2004), 258–84.

taking place before the next. This significantly increased the number of executions taking place, though with fewer hanged on each occasion.¹⁵⁵ In the tertiary cases uncovered, the one death sentence given in this decade was not carried out, with only one of four in the 1770s. Furthermore, Thomas Jones's death sentence for highway robbery was respited due to a point of law requiring clarification, after which it was reinstated.¹⁵⁶ However, he appears to have been sentenced to three years imprisonment, though he received a remission for this after a less than a year, at which point he disappears from the records.¹⁵⁷ Another respite was given in a controversial case which established that threatening to accuse a man of sodomy constituted a form of robbery, despite the prosecutor being the second son of the Earl of Denbigh.¹⁵⁸

The broader trend at the Old Bailey is that while many more people were executed in the 1770s, this was still 50% less than the 1780s. Indeed, this decade was exceptional in the history of capital punishment, with large scale execution scenes happening 'with a frequency unknown since the early seventeenth century'.¹⁵⁹ It has been estimated that in the third quarter of the eighteenth century, more people were capitally convicted and hanged in London than any other part of Britain.¹⁶⁰ However only one of three men uncovered here was executed in the 1780s. It may be that the execution was carried out due to the prosecutor's character as an esquire and wine merchant, although the above case shows that a respectable prosecutor did not always result in an execution for the convict.¹⁶¹

For all cases heard at the Old Bailey, the 1790s saw 11% of Old Bailey Sessions with no prisoner executions, and a third in the 1800s.¹⁶² No executions have been uncovered in the cases collected for these decades. However, fewer executions meant great attention given

¹⁵⁵ Devereaux, 'Execution and Pardon', 460.

¹⁵⁶ *OBP*, supplementary material, May 1776 (o17760522-1).

¹⁵⁷ *The Digital Panopticon*, Thomas Jones, <https://www.digitalpanopticon.org/life?id=obpt17760221-5-defend110>, accessed 16 February 2021.

¹⁵⁸ *OBP*, trial of James Donally, otherwise Patrick Donally, February 1779 (t17790217-40).

¹⁵⁹ Devereaux, 'Execution and Pardon', 464.

¹⁶⁰ Peter King and Richard Ward, 'Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery', *Past & Present* 228, no. 1 (2015): 159–205.

¹⁶¹ *OBP*, trial of Jonathan Harwood, April 1786 (t17860426-11).

¹⁶² Devereaux, 'Execution and Pardon', 472.

to them.¹⁶³ The 1810s saw half of men capitally convicted hanged, in two of four cases. It has been noted that the end of conflict with France produced a crime wave, which led to a resolve to punish forms of theft.¹⁶⁴ However, the two executions for highway robbery collected here took place in the early decade while still at war. In the first, the prosecutor held a respectable position as purveyor to the army medical board, and emphasised the violence he received from the defendant.¹⁶⁵ In the other, a policeman witnessed the defendant asking for money, sealing his guilt.¹⁶⁶ Fast forward to the 1820s, which saw a revival of high numbers executed. Indeed, Gatrell famously stated ‘the noose was at its most active on the very eve of capital law repeals!’, although Devereaux proves there was restraint in its application.¹⁶⁷ Similarly, in the following decade only one death sentence was given, though it was completed. This is despite an overall reduction in the number of executions occurring; this man was involved in only one of three total hangings in 1832, aside from murderers.¹⁶⁸ Despite this anomaly, defendants in tertiary cases of sexual violence appear to have been treated relatively similarly to the norm.

The impact of pardons is evident in the cases uncovered, as there was a higher chance of an alternative outcome than hanging (74%). Indeed, the death penalty declined due to availability of alternatives.¹⁶⁹ At the same time, executions had to be curtailed due to the increasing number of prosecutions for capital crimes.¹⁷⁰ Hanging was about as likely as being transported, and all of those who received this commutation were sentenced for robberies. This matches with the finding that between the 1780s and early 1800s the chance of being executed for robbery fell from one half to one fifth.¹⁷¹ This is at least partially due to the establishment of a new penal settlement in New South Wales in 1788.¹⁷² The lengths of commutations differed. The standard sentence for felons was fourteen years, which one

¹⁶³ V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1808* (Oxford: Oxford University Press, 1994), 161.

¹⁶⁴ Beattie, *Crime and the Courts*, 213–35; King, *Crime, Justice and Discretion*, 53–68.

¹⁶⁵ *OBP*, trial of William Cane, July 1810 (t18100718-66).

¹⁶⁶ *OBP*, trial of John Sylvester, September 1813 (t18130915-26).

¹⁶⁷ Gatrell, *The Hanging Tree*, 7; Devereaux, ‘Execution and Pardon’, 484.

¹⁶⁸ Devereaux, ‘Execution and Pardon’, 490.

¹⁶⁹ Briggs et al., *Crime and Punishment*, 72.

¹⁷⁰ Gatrell, *The Hanging Tree*.

¹⁷¹ Devereaux, ‘Execution and Pardon’, 473.

¹⁷² Devereaux, 470.

man transported to Africa received in 1783.¹⁷³ Three received sentences of life, one unusually early in 1768, the others in 1790 and 1801. As the period progressed, the most common sentence became twenty-one years, once being given in 1787, and four times between 1805 and 1818. Hence, over time, longer sentences became standard for men pardoned from the death sentence.

One man's death sentence was commuted in favour of transportation, but then he was pardoned to serve as a soldier abroad instead. He had already served in the forces, which was evidently noticed and he was sentenced to serve until discharged instead.¹⁷⁴ This practice was common for those with military experience and increased during the Napoleonic Wars, when it was given.¹⁷⁵ The King even requested details of the case, perhaps due to his military experience or because he was convicted of extorting a Baron.¹⁷⁶

Even more unique was one man who initially refused the commutation of his death sentence to transportation, preferring death instead.¹⁷⁷ He may have initially received this commutation due to refusing money for his silence, or some belief in his allegations as he declared his innocence even after receiving his sentence, printed at the end of the *Proceedings* report.¹⁷⁸ He was part of a group of nine men who refused their pardons on the 9th of September 1789; a group of women had done so in the months before. These refusals were at least partly due to the unpopularity of transportation.¹⁷⁹ However, analysis by Lynn MacKay has considered these refusals as self-conscious acts of defiance.¹⁸⁰ Devereaux agreed and extended this to include awareness of the difficulties their actions proved, especially considering increases in executions in the 1780s.¹⁸¹ In any case, the men involved

¹⁷³ Maxwell-Stewart, 'Convict Transportation from Britain and Ireland', 1226.

¹⁷⁴ TNA, Correspondence and Warrants, 19/01/1798 (HO13/11/416-417); Home Office: Criminal Registers, Middlesex, 1791-1849 (HO26/6).

¹⁷⁵ Maxwell-Stewart, 'Convict Transportation from Britain and Ireland', 1229.

¹⁷⁶ TNA, Correspondence and Warrants, 28/10/1797 (HO13/11/360); 02/11/1797 (HO13/11/363).

¹⁷⁷ OBP, supplementary material, George Hyser, September 1789 (o17890909-8).

¹⁷⁸ OBP, trial of George Hyser and George Ellison, May 1787 (t17870523-17).

¹⁷⁹ Ignatieff, *A Just Measure of Pain*, 91.

¹⁸⁰ Lynn MacKay, 'Refusing the Royal Pardon: London Capital Convicts and the Reactions of the Courts and Press, 1789', *The London Journal* 28, no. 2 (2003): 21-40.

¹⁸¹ Simon Devereaux, 'Imposing the Royal Pardon: Execution, Transportation, and Convict Resistance in London, 1789', *Law and History Review* 25, no. 1 (2007): 101-38.

soon relented and accepted transportation.¹⁸² James has examined pardon refusers on the hulks, and similarly finds a self-conscious awareness of their agency.¹⁸³

Transportation was by far the most common alternative outcome for capital convicts – in cases involving sexual violence between men or otherwise – though imprisonment was used as an alternative in one case. Perhaps this was due to the lack of development in the penal regime until the later stages of the period when death sentences were already unlikely. Nevertheless, a case from 1779 was integral to establishing that threats to character were as important as threats of violence.¹⁸⁴ Imprisonment may have occurred due to Lord Fielding discovering the man soliciting sexual favours with his son. Furthermore, he had an interesting time in prison, including being involved in an escape attempt.¹⁸⁵ Still, as an alternative to execution it was uncommon.

There were more positive outcomes for men convicted when sexual assault was the tertiary driver of a prosecution too. In 1798, a man was freed seven years after his sentence of death for highway robbery due to ‘favourable circumstances’.¹⁸⁶ In 1822 another man was freed after two years of his capital sentence for the same offence, perhaps due his age – only nineteen.¹⁸⁷ Although uncommon in the cases of sexual violence collected here, free pardons were sometimes received.

Indeed, comparing these cases against the norm indicates that men who alleged sexual assaults in their defence for non-sexual offences were not treated differently than others, though the proportions of condemned per decade sometimes differed. Outside of particularly bloody decades at the Old Bailey – the 1780s and 1820s – cases here mostly matched with proportions of men executed. Furthermore, they followed broader currents concerning specific crimes, such as how the likelihood of being executed for robbery fell in the final decades of the eighteenth century. Hence, men convicted in the cases explored

¹⁸² *OBP*, supplementary material, George Hyser, September 1789 (o17890909-18).

¹⁸³ Jeff James, ‘“Raising Sand, Soil and Gravel” Pardon Refusers On-Board Prison Hulks (1776–1815)’, *Family & Community History* 20, no. 1 (2017): 3–24.

¹⁸⁴ *OBP*, trial of James Donally, otherwise Patrick Donally, February 1779 (t17790217-40).

¹⁸⁵ Simon Devereaux, *Donally, James (fl. 1779–1784), Blackmailer* (Oxford University Press, 2012).

¹⁸⁶ *TNA*, Correspondence and Warrants, 14 May 1805 (HO 13/16/423-4).

¹⁸⁷ *TNA*, Correspondence and Warrants, 29 September 1824 (HO13/43/171).

here were only slightly less likely to be executed, and slightly more likely to be commuted or pardoned than the average convict at the Old Bailey.¹⁸⁸

The evidence, based on very small numbers, suggests that when a sexual assault was secondary to another charge there was a higher chance of execution for the defendant (75%) than if it was the primary charge (33%). However, when it was secondary, focus was more on the theft than the sexual assault, with at least one defendant previously capitally sentenced, and another receiving mercy, probably due to his young age and character. Therefore, the larger proportion perhaps highlights the importance of other factors, though the few prosecutions collected with a sexual assault as the primary or secondary driver make these suppositions tentative. When a sexual assault was used as a defence tactic in tertiary cases hanging occurred less (26%), with a much greater variety of post-trial outcomes, and reasons given for them.

Indeed, although certain circumstances may have influenced verdicts and sentencing decisions, they do not appear to have had an impact on post-trial decisions. On the other hand, the character of the defendant sometimes assumed importance. Of the pardon given in the primary case, one man was freed probably due to his status as a victualler – despite committing forced penetration. In the only secondary prosecution that was respited, the defendant was recommended to mercy, again potentially due to multiple character witnesses. In tertiary cases, one man was pardoned for his military experience, and another received freedom perhaps due to his young age. While sometimes executions were carried out in cases with respectable or upper-class prosecutors, this was not always the case. Hence, the evidence suggests that in general, the character of defendants, or their previous experiences, was more important in determining post-trial outcomes than any particulars in cases of sexual violence between men.

This section has shown the importance of checking the actual outcomes of a case, rather than taking the sentence given as reality. There was a reliance on pardoning to avoid

¹⁸⁸ One scholar of unnatural crimes in Colonial New Spain has found that while consent was important in determining guilt, violent cases did not result in harsher sentences in the early nineteenth century. See Zeb Tortorici, *Sins Against Nature: Sex and Archives in Colonial New Spain* (London: Duke University Press, 2018), 107–8.

collapse of the criminal justice system.¹⁸⁹ Looking simply at sentences recorded gives a partial view of the workings of the criminal justice system. The actual post-trial outcomes of prosecutions can only be found by consulting other records.¹⁹⁰

Conclusion

This chapter has uncovered important differences in how prosecutions containing evidence of male on male sexual assault were dealt with at different stages of the criminal justice system and depending on the importance of a sexual assault to a case.

In terms of verdicts, when sexual assault was the primary driver of a prosecution heightened physical violence and the presence of witnesses meant passage to higher courts or conviction was more likely at every court examined. When it was secondary to another, non-sexual charge, conviction nearly always occurred, indicating that the presence of a sexual assault compounded the main charge – although focus of reports tended to be on the main offence rather than the sexual assault. In tertiary cases when sexual assault was used as a defence tactic, there was little sympathy for defendants who used it, with most convicted.

Patterns in sentencing were more haphazard. When a sexual assault was the primary driver of a prosecution, a higher degree of violence and the presence of witnesses resulted in severer sentences only sometimes at the Middlesex and Westminster Sessions, with the evidence suggesting the importance of character and whether a magistrate wished to make an example of an perpetrator. These factors also affected sentences at the Old Bailey, with the harshest sentences given in cases with more violence and witnesses. On the other hand, defendants received similar sentences in secondary and tertiary cases, indicating that in the former, a sexual assault along with a robbery did not result in severer sentences. When a sexual assault was used as a defence in tertiary cases, the harshest sentences were given to defendants with previous convictions, again suggesting the importance of additional factors such as age and character.

¹⁸⁹ James, "Raising Sand, Soil and Gravel", 4.

¹⁹⁰ Though digitised records are sometimes locked behind paywalls, which limits their availability to the public.

Post-trial outcomes appear to have been influenced by many of the particulars already mentioned. Despite differences in the proportions of men executed in each type of prosecution, separate post-trial outcomes seem to be the results of several factors, such as age, character, and previous convictions, rather than levels of violence or witnesses when a sexual assault was the primary charge, dual crimes when it was secondary, or sympathy for certain defence tactics when a sexual assault was tertiary. Defendants in all types of cases appear to have been treated relatively similarly to the norm.

What follows is the conclusion, which ties the whole thesis together.

Conclusion

The chief question this thesis posed was: how can evidence of male on male sexual violence in late eighteenth and nineteenth century London be uncovered? It has proved that it is possible by using a method that centres the issue of consent. With this notion in mind, several markers assumed importance in deciding whether an act was consensual or otherwise. These included descriptions of physical violence, verbal pronouncements of non-consent, resistance or attempts to do so, and attempting to escape from a situation. These markers were important indicators when distinguishing between consensual and non-consensual sexual acts between men. Therefore, this thesis has shown that despite a lack of specific criminalisation it is possible to recover evidence of sexual violence between men in the past.

Application of this method to court records and newspaper reporting of criminal trials resulted in 244 unique instances of sexual violence uncovered, prosecuted for a whole host of offences at multiple courts. Indeed, this was largely determined by the importance of a sexual assault in a case. Most of the evidence was collected from cases with a sexual assault as the primary driver of a prosecution, with a man prosecuting another man for committing a sexual assault on him, usually for a sexual offence such as sodomy or indecent assault. This evidence predominated in witness statements covering the Middlesex and Westminster Sessions, and in newspaper reporting of magistrate courts, the Middlesex and Westminster Sessions, the Old Bailey, and others such as the King's Bench. A small number of cases were recovered with a sexual assault as the secondary driver of a prosecution – a man prosecuting another man for committing both a sexual assault and robbery on him, found largely from theft offences in the *Proceedings*. Uncovered more frequently in the *Proceedings* were cases categorised with a sexual assault as the tertiary driver of a prosecution, when a man was using an accusation of sexual assault in his defence when being prosecuted for another crime, usually a theft offence, in order to remove responsibility for this other crime. Hence, the evidence demonstrates that allegations of sexual assault were used in a variety of ways, and, furthermore, that they can be recovered

from many different offences prosecuted at several courts. Perhaps evidence may be hidden in the records more specific to some of these courts.¹

What can the evidence tell us about the discourses surrounding male on male sexual violence in this period? The representation of sexual violence within these sources demonstrates that the vocabulary used to describe sexual assaults was rarely dissimilar to consensual acts. That said, the shifting terminology used to signify these assaults shifted from explicit narratives of the late eighteenth century to a sanitised and respectable reporting in the nineteenth century, with indecency as the main signifier of same-sex acts. Although the presence of a sexual context has been found to be an important factor when reporting crime, the specific details of sexual acts were often purged and replaced by euphemistic language and metaphors.² Reporting practices such as the use of euphemisms that denote acts of sexual violence against women – as explored by Stevenson – were certainly present when considering men too.³ However, different words and phrases were used, including the use of ellipsis and asterisks, as Cocks has discussed.⁴

Over the course of the eighteenth and nineteenth centuries, owing to increased prosecutions for homosexual crimes and the rise of Evangelism and morality movements, sexual acts between men were increasingly treated as a relatively frequent aspect of life, judging by the scale of reporting. Cox, Harris, Rowbotham and Stevenson have suggested that over the course of the period of study, ‘public indecency’ was conceptualised as a problem.⁵ Again, this thesis proposes that part of this were not only sexual acts in public but those of sexual violence allegedly committed specifically against men. Therefore, across the

¹ For instance, minute books of Guildhall and Mansion House, see Chapter Three, 66–67, footnote 44. Another avenue might be indictments for London and Middlesex at the Court of King's Bench, held at The National Archives (KB10 series).

² See Peter King, ‘Making Crime News: Newspapers, Violent Crime and the Selective Reporting of Old Bailey Trials in the Late Eighteenth Century’, *Crime, Histoire & Sociétés / Crime, History & Societies* 13, no. 1 (2009): 91–116; Kim Stevenson, ‘Crimes of Moral Outrage: Victorian Encryptions of Sexual Violence’, in *Criminal Conversations: Victorian Crimes, Social Panic and Moral Outrage*, ed. Judith Rowbotham and Kim Stevenson (Illinois: University of Illinois Press, 2005).

³ Stevenson, ‘Crimes of Moral Outrage’.

⁴ Harry Cocks, *Nameless Offences: Homosexual Desire in the Nineteenth Century* (London: I. B. Tauris, 2003), 80–82.

⁵ David J. Cox, Candida Harris, Judith Rowbotham and Kim Stevenson, *Public Indecency in England 1857–1960: 'A Serious and Growing Evil'* (London: Routledge, 2015), 26–27.

period, male on male sexual violence was treated much less as uncommon, but reported to have been committed with relative frequency, especially in certain locations.

By exploring the narratives of victims and their journey through the criminal justice system, this thesis contributes to desires to grant agency to victims of sexual violence.⁶ Nearly all victim narratives attempted to demonstrate non-consent by emphasising the presence of physical violence, such as sexual touching or forced penetration. Most also emphasised giving a verbal pronouncement such as telling the perpetrator to cease or resisting them with violence, or simply running away. Some also detailed being offered money for silence, hinting at the possibility that homosexual sex was readily available on the streets, as Cocks has suggested.⁷ These elements were referred to in similar proportions across all types of prosecution, suggesting that accusations of sexual assault in a defence may have been truthful. On the other hand, perhaps more likely is that enough was known about sexual assault that men were able to create a convincing defence. Due to the nature of the surviving evidence it is difficult to know for certain.

Following Walker, this thesis has also considered the perpetrators of violence.⁸ Unlike the narratives of victims, those of the perpetrator differed more significantly depending on the importance of a sexual assault to a case. When a sexual assault was the primary driver of a prosecution, most perpetrators emphasised their respectability and character, and the lack of it in their accuser. Occasionally, pleas of intoxication were offered. When a sexual assault was the secondary driver, most perpetrators testified that in fact they were the victims of sexual assault. Finally, when a sexual assault was the tertiary driver, most perpetrators, unsurprisingly, argued that an assault was concocted to extort money. Thus, perpetrators gave a variety of reasons for being implicated in cases containing male on male sexual violence.

The prosecutions uncovered show that most instances of violence were sexual assaults in the form of genital touching, with substantially few cases of forced penetration, largely due

⁶ Shani D'Cruze, 'Approaching the History of Rape and Sexual Violence: Notes towards Research', *Women's History Review* 1, no. 3 (1992): 377–97.

⁷ Cocks, *Nameless Offences*, 27.

⁸ Garthine Walker, 'Everyman or a Monster? The Rapist in Early Modern England, c.1600–1750', *History Workshop Journal* 76, no. 1 (2013): 5–31.

to lack of detail in the sources consulted making determining the type of violence difficult. Other exceptional instances of violence were a forced to penetrate case, which highlights the difficulty of prosecuting sexual assault, and the potential use of drugs in another. All of this challenges Norton's contention that 'genuine assaults involved no more than unwanted sexual solicitation'.⁹ While propositioning was evident in some cases, others contained the presence of a range of physical – and potentially mental – harm which should not simply be shrugged off. Moreover, the evidence suggests that since sexual assault was most frequently alleged across all types of prosecution, this was the standard way of accusing another man of sexual assault, be that in a statement by the prosecutor or defendant.

According to the surviving evidence, most sexual violence was allegedly committed in public spaces. Furthermore, although it happened across London, including the City and East End, most occurred in the West End. The majority of police court activity relating to sex between men occurred in this part of the capital, which was essentially the best policed, as Upchurch noted.¹⁰ Marylebone and Covent Garden were frequently stated when a sexual assault was the primary driver of a prosecution, with a greater spread when it secondary, and when it was tertiary most occurred within or closer to the City. Furthermore, many assaults were alleged in places connected with homosexual cultures, such as the Royal Parks, urinals, and print shop windows. The locations collected here certainly suggest continuity with homosexual practices before, during, and after the period of study, as found by several historians.¹¹ However, it should be added that these spaces contained not only consensual relations for men seeking sex with other men, but also the potential of sexual assault, plus the possibility of falling victim to other crimes and being accused of it, indicating an awareness of them as spaces of homosexuality.

This thesis has attempted to understand sexual assaults against men by enquiring into the specifics of assaults, especially when they were committed, and by whom. For instance, unsurprisingly, the vast majority of offences were committed at night. Furthermore, though

⁹ Rictor Norton, 'Recovering Gay History from the Old Bailey', *London Journal* 30, no. 1 (2005): 46.

¹⁰ Charles Upchurch, *Before Wilde: Sex Between Men in Britain's Age of Reform* (London: University of California Press Ltd, 2009), 107–8.

¹¹ Rictor Norton, *Mother Clap's 'Molly' House: The Gay Subculture in England 1700-1830* (London: Gay Men's Press, 1992); Cocks, *Nameless Offences*; Matt Cook, *London and the Culture of Homosexuality, 1885-1914* (Cambridge: Cambridge University Press, 2003); Matt Houlbrook, *Queer London: Perils and Pleasures in the Sexual Metropolis, 1918-1957* (Chicago: Chicago University Press, 2005).

there was variation when looking at days or months, results were largely predictable – public assaults were more common in summer and private ones in winter. Investigations of these particulars have tended not to be examined by researchers, though they provide important contextualisation for acts of sexual assault.

Age has also not generally been a focus for historians analysing homosexual acts.¹² According to the evidence, the ages of victims and perpetrators were relatively uniform across all types of prosecution. When a sexual assault was the primary driver of a prosecution, most victims were young men in their twenties who would have been mostly unattached, and perpetrators largely in their thirties, though not unusually multiple decades older, suggesting that they were looking for sex. While data was lacking on the ages of prosecutors when a sexual assault was secondary in a prosecution, the defendants were also young men in their twenties. Similarly, when a sexual assault was tertiary in a prosecution most alleged victims were young men in their twenties, matching expected patterns of criminality, with perpetrators in their thirties and sometimes much older, as when a sexual assault was primary. Hence, generally, alleged victims and perpetrators were of a similar age range, with only slight variations depending on the importance of a sexual assault to a prosecution.

This similarity continued when investigating occupations, with most victims of low or middling social status. When a sexual assault was the primary driver of a prosecution, victims largely consisted of policemen and soldiers. Perpetrators in these cases tended to be slightly higher up the social scale, with many servants and sales workers, plus a few professionals. When a sexual assault was the secondary driver, victims and perpetrators were again of similar social status. When it was tertiary, there are slightly larger disparities. Most victims were soldiers, with a greater proportion of perpetrators as professionals or the upper classes. Overall, however, victims and perpetrators across all types of prosecution tended to be of relatively similar social status. These findings compare with the sample collected by Cocks on homosexual sex in the nineteenth century more generally, again

¹² For a recent exception, see Kate Fisher and Jana Funke, 'The Age of Attraction: Age, Gender and the History of Modern Male Homosexuality', *Gender & History* 31, no. 2 (2019): 266–83.

showing how male on male sexual violence compared with homosexual culture more widely.¹³

The similarities between different types of prosecutions end when considering the verdicts within the courtroom. When a sexual assault was the primary driver of a prosecution, passage to higher courts or conviction was more likely in cases with heightened physical violence or corroborating evidence such as witnesses and clothes. When a sexual assault was secondary, conviction was nearly always the result, although focus tended to be on the act of robbery rather than the sexual assault. When a sexual assault was the tertiary driver of a prosecution conviction was most likely for defendants, indicating there was little sympathy for men who accused other men of sexual assault in their defence.

In terms of sentencing, when a sexual assault was the primary driver of a prosecution more physical violence and witnesses generally resulted in harsher sentences, though this differed depending on the court. Furthermore, the evidence suggests the importance of character and the actions of magistrates when determining punishment. Harsh sentences were handed out when a sexual assault was the secondary driver of a prosecution, due to most being for capital offences. When a sexual assault was the tertiary driver, the severest sentences were given to defendants with previous convictions, again suggesting the importance of many factors in determining punishment. Examination of post-trial outcomes demonstrates there was little difference between the types of prosecution, with factors such as age, character, and previous convictions assuming importance in whether a sentence was carried out. Overall, defendants do not appear to have been treated differently to the norm.

Most of the records used here are legal, or those pertaining to the criminal justice system in one way or another. Norton is right to question the legal bias in histories of homosexuality, but is incorrect when he says the focus on prosecution, conviction, and punishment privileges law over people.¹⁴ As has been shown here, it is possible to examine the narratives of the men involved in order to understand same-sex acts more fully, and by extension, sexually violent ones. At the same time, it is recognised that use of legal records

¹³ Cocks, *Nameless Offences*, 46–47.

¹⁴ Norton, 'Recovering Gay History', 44.

can only go so far, and a major downside is a lack of post-trial information. While online databases such as Ancestry and FindMyPast have been useful in finding more data on the men involved, such as their ages and occupations, they can be similarly lacking information after a trial. On the other hand, the Digital Panopticon has been exceptional, and provided extra data from consultation of transportation records, marriage certificates, and potential death records. However, this database largely focuses on transported convicts, limiting its use in earlier periods, and indeed has been of relatively limited use for the current research.

Perhaps the greatest limitation of this research is the relatively small number of cases collected – 244 in total – despite a one-hundred-year period sampled. Therefore, while it is possible to uncover acts of sexual violence between men in the past, only a small amount of evidence can be used. Part of the reason for this is not lacking evidence of sex between men, but a deficiency of detail in the sources consulted, making the determination of consent difficult. For instance, in the *Proceedings*, detail in sexual offences was severely lacking from the final decade of the eighteenth century, resulting in a potentially useful corpus of data that was hidden. Between 1790-1861, this includes two hundred and five prosecutions for sodomy, forty-two for attempted sodomy, and fifteen cases of indecent assault with males as victims.¹⁵ The newspapers consulted similarly could contain a lack of detail to determine consent, due to awareness of public sensibilities which resulted in narratives being expunged. What's more, although examinations for the Middlesex and Westminster Sessions generally contained explicit language which stated the minutiae of sexual assaults in detail, they have a variable survival rate and have not been fully catalogued. Most records collected were created between 1826-1836, making analysis of shifts over time difficult. After this end date, they are mostly uncatalogued.

Of course, these uncatalogued collections provide a possible starting point for future research. Between 1837-1861 for example, an average of 333 bundles of examinations exist per year.¹⁶ Of course, research of male on male sexual violence need not be constrained by the time period studied here. These records run until 1903, no doubt containing much of

¹⁵ *Old Bailey Proceedings*, www.oldbaileyonline.org/forms/formStats.jsp, accessed 12 October 2020.

¹⁶ *London Metropolitan Archives*, https://search.lma.gov.uk/scripts/mwimain.dll/144/LMA_OPAC/web_detail?SESSIONSEARCH&exp=refd/MJ/SP, accessed 26 October 2020.

use to not only the study of sexual violence between men but crime more generally. The other sources are similarly long in scope. The *Proceedings* began publishing in 1674 for example, with the first case of sodomy three years later, and ran until 1913, fifty-two years after the end point of this thesis. It goes without saying that other newspapers might be used, especially for the period of study. For instance, both Cocks and Upchurch found reporting relating to sex between men in the *Weekly Dispatch* (1801 – 1961) and *John Bull* (1820 – 1964), among others.¹⁷ Concerning male on male sexual violence, other newspapers with promising results not consulted here due to time constraints include the *Public Advertiser* (1752 – 1793), *The Examiner* (1808 – 1886), *The Sunday Times* (1822 – present) and *The Standard* (1827 – present). Considering the fewer number of titles and difficulty of digitisation, newspapers are more likely to be of use in more recent times than preceding the period of study.¹⁸

The cases collected also hint at male on male sexual violence committed in homosocial institutional settings. Penal imprisonment greatly expanded in the period of study, with rising convict populations, overcrowding, and shifts in confinement regimes. Records such as punishment books and governor's journals contained evidence of crimes committed within prison walls, potentially including sexual assaults between men. Punishment books have also been fruitful for exploring workhouse offences, such as has recently been shown by Williams.¹⁹ Another institution in which we might expect to find sexual violence between men is the Navy. Such an institution lends itself to a study of sexual violence due to its position as an increasingly homosocial space throughout the period under study. Furthermore, homosexuality in the Navy has already been the topic of extensive study by historians.²⁰ Records of court martial in the National Archives are a good starting point for understanding sexual violence against men in the Navy.

¹⁷ Cocks, *Nameless Offences*; Upchurch, *Before Wilde*.

¹⁸ Methodological limitations of digitised newspapers were outlined in Chapter One, 33-34.

¹⁹ Samantha Williams, 'Paupers Behaving Badly: Punishment in the Victorian Workhouse', *Journal of British Studies* 59, no. 4 (2020): 764–92.

²⁰ Arthur N. Gilbert, 'Buggery and the British Navy, 1700-1861', *Journal of Social History* 10, no. 1 (1976): 72–98; 'The Africaine Courts-Martial: A Study of Buggery and the Royal Navy', *Journal of Homosexuality* 1, no. 1 (1976): 111–22; Barry Richard Burg, 'The HMS African Revisited: The Royal Navy and the Homosexual Community', *Journal of Homosexuality* 56, no. 2 (2009): 173–94; 'Officers, Shipboard Boys and Courts Martial for Sodomy and Indecency in the Georgian Navy', in *The Social History of English Seamen 1650-1815*, ed. Cheryl Fury (Woodbridge: The Boydell Press, 2017); Seth Stein LeJacq, 'Buggery's Travels: Royal Navy Sodomy on Ship and Shore in the Long Eighteenth Century', *Journal for Maritime Research* 17, no. 2 (2015): 103–16.

As is evident in the possible use of these institutional sources, London need not be the focus of attention, as it has tended to be when researching British homosexuality. Prosecutions heard at other courts around the country, such as Assizes or Quarter Sessions, hold rich records for the study of crime, and have been utilised by many historians.²¹ The newspapers examined here contained some provincial crime reporting, though their use would need to be supplemented with local records.²² More widely, the topic can be expanded outside of Britain. Forced penetration has already been studied in Imperial China, for example.²³ There has also been much research on homosexuality in France, with new sources unearthed recently.²⁴

The findings in this thesis support Robertson's call for 'a sustained historical analysis of sodomy in terms of the history of sexual violence', as he and others have done for an American context.²⁵ While it has generally been recognised that males could suffer from sexual assault, most analysis in the British context has focused on children.²⁶ Cocks is one of the few to show how men might have been victims of sexual assault, though does not focus on the issue in a sustained way.²⁷ Similarly, Upchurch pointed out instances of assault but did not analyse them in depth.²⁸ By investigating sexual assault on men specifically, this thesis advocates that the study of sexual violence should be broadened to include men as victims. It has shown that it is possible to recover non-consensual sexual acts between men and has detailed the use of a method to do so.

²¹ The classic example is John M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton: Princeton University Press, 1986).

²² Especially *The Times*, though coverage was limited, see Andrew Hobbs, 'The Deleterious Dominance of The Times in Nineteenth-Century Scholarship', *Journal of Victorian Culture* 18, no. 4 (2013): 485–86.

²³ Matthew H. Sommer, 'The Penetrated Male in Late Imperial China: Judicial Constructions and Social Stigma', *Modern China* 23, no. 2 (1997): 140–80.

²⁴ Jeffrey Merrick, 'New Sources and Questions for Research on Sexual Relations between Men in Eighteenth-Century France', *Gender & History* 30, no. 1 (2018): 9–29.

²⁵ Stephen Robertson, 'Shifting the Scene of the Crime: Sodomy and the American History of Sexual Violence', *Journal of the History of Sexuality* 19, no. 2 (2010): 224; Thomas A. Foster, *Rethinking Rufus: Sexual Violations of Enslaved Men* (Athens: The University of Georgia Press, 2019).

²⁶ Such as Louise A. Jackson, *Child Sexual Abuse in Victorian England* (London: Routledge, 2000); Daniel J. R. Grey, "'Monstrous and Indefensible'? Newspaper Accounts of Sexual Assaults on Children in Nineteenth-Century England and Wales', in *Women's Criminality in Europe, 1600–1914*, ed. Manon van der Heijden, Marion Pluskota, and Sanne Muurling (Cambridge: Cambridge University Press, 2020), 189–205.

²⁷ Cocks, *Nameless Offences*.

²⁸ Upchurch, *Before Wilde*.

Lack of focus on men as victims of sexual assault has served to reiterate the assumption that they cannot be victims, which continues to this day. As is evident from this thesis, men have been suffering from sexual violence and accusing other men of it for hundreds of years, dispelling such notions. As such, research on sexual violence should place men firmly inside it.

Appendix A: Excerpts of legislation

Unless otherwise stated, full texts of legislation have been taken from the Justis database.¹

Sexual offences

The Punishment of the Vice of Buggery, 25 Hen.8, c.6 (1533-1534)

Forasmuch as there is not yet sufficient and condign Punishment appointed and limited by the due Course of the Laws of this Realm, for the detestable and abominable Vice of Buggery committed with Mankind or Beast:¹ (2) It may therefore please the King's Highness, with the Assent of his Lords Spiritual and Temporal, and the Commons, of this present Parliament assembled, that it may be enacted by Authority of the same, That the same Offence be from henceforth adjudged Felony, and such Order and Form of Process therein to be used against the Perpetrators as in Cases of Felony at the Common Law; (3) and that the Perpetrators being hereof convict by Verdict, Consession, or Outlawry, shall suffer such Pains of Death, and Losses and Penalties of their Goods, Chattels, Debts, Lands, Tenements and Hereditaments, as Felons be accustomed to do, according to the Order of the Common Laws of this Realm; (4) and that no Person offending in any such Offence, shall be admitted to his Clergy; (5) and that Justices of Peace shall have Power and Authority, within the Limits of their Commissions and Jurisdiction, to hear and determine the said Offence, as they do use to do in Cases of other Felonies. (6) This Act to endure till the last Day of the next Parliament.

Offences Against the Person (England) Act, 9 Geo.4, c.31 (1828)

XV Sodomy.

XV. And be it enacted, That every Person convicted of the abominable Crime of Buggery, committed either with Mankind or with any Animal, shall suffer Death as a Felon.

XVIII What shall be sufficient Proof of carnal Knowledge in the Four preceding Cases.

¹ Available (with a subscription) at Justis, <https://app.justis.com/>, accessed 20 October 2020.

XVIII. And Whereas upon Trials for the Crimes of Buggery and of Rape, and of carnally abusing Girls under the respective Ages hereinbefore mentioned, Perpetrators frequently escape by reason of the Difficulty of the Proof which has been required of the Completion of those several Crimes;' for Remedy thereof be it enacted, That it shall not be necessary, in any of those Cases, to prove the actual Emission of Seed in order to constitute a carnal Knowledge, but that the carnal Knowledge shall be deemed complete upon Proof of Penetration only.

An Act to consolidate and amend the Statute Law of England and Ireland relating to Offences against the Person, 24 & 25 Vict, c.100 (1861)

61 Sodomy and Bestiality.

Whosoever shall be convicted of the abominable Crime of Buggery, committed either with Mankind or with any Animal, shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for Life or for any Term not less than Ten Years.

62 Attempt to commit an infamous Crime.

Whosoever shall attempt to commit the said abominable Crime, or shall be guilty of any Assault with Intent to commit the same, or of any indecent Assault upon any Male Person, shall be guilty of a Misdemeanor, and being convicted thereof shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for any Term not exceeding Ten Years and not less than Three Years, or to be imprisoned for any Term not exceeding Two Years, with or without Hard Labour.

Sexual Offences Act, c.60 (1967)

1 Amendment of law relating to homosexual acts in private.

(1) Notwithstanding any statutory or common law provision, but subject to the provisions of the next following section, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of twenty-one years.

3 Revised punishments for homosexual acts.

(1) The maximum punishment which may be imposed on conviction on indictment of a man for buggery with another man of or over the age of sixteen shall, instead of being imprisonment for life as prescribed by paragraph 3 of Schedule 2 to the Act of 1956, be—

) imprisonment for a term of ten years except where the other man consented thereto; and

) in the said excepted case, imprisonment for a term of five years if the accused is of or over the age of twenty-one and the other man is under that age, but otherwise two years;

and the maximum punishment prescribed by that paragraph for an attempt to commit buggery with another man (ten years) shall not apply where that other man is of or over the age of sixteen.

Criminal Justice and Public Order Act, c.33, s.142 (1994)

1 Rape of woman or man.

(1) It is an offence for a man to rape a woman or another man.

(2) A man commits rape if—

(a) he has sexual intercourse with a person (whether vaginal or anal) who at the time of the intercourse does not consent to it; and

(b) at the time he knows that the person does not consent to the intercourse or is reckless as to whether that person consents to it.

Theft offences

An Act for consolidating and amending the Laws in England relative to Larceny and other Offences connected therewith, 7 & 8 Geo.4, c.29 (1827)

VII Obtaining Money, &c. by threatening to accuse a Party of an infamous Crime.

VII. And be it declared and enacted, That if any Person shall accuse or threaten to accuse any other Person of any infamous Crime, as hereinafter defined, with a View or Intent to extort or gain from him, and shall by intimidating him by such Accusation or Threat extort or gain from him any Chattel, Money, or valuable Security, every such Perpetrator shall be deemed guilty of Robbery, and shall be indicted and punished accordingly.

An Act for extending the Provisions of the Law respecting Threatening Letters and accusing Parties with a view to extort Money, 10 & 11 Vict, c.66 (1847)

II Persons accusing others of Crimes herein-before mentioned, with the of extorting Money, & guilty of Felony.

II. And be it enacted, That if any Person shall accuse or threaten to accuse either the Person to whom such Accusation or Threat shall be made, or any other Person of any of the Crimes herein-before specified, with the View or Intent in any of the Cases last aforesaid to extort or gain from such Person so accused or threatened to be accused, or from any other Person whatever, any Property, Money, Security, or other valuable Thing, every such Perpetrator shall be guilty of Felony, and, being convicted, thereof, shall be liable, at the Discretion of the Court, to be transported beyond the Seas for Life, or for any Term not less than Seven Years, or to be imprisoned, with or without hard Labour, for any Term not exceeding Four Years, and, if a Male, to be once, twice, or thrice publicly or privately whipped (if the Court shall so think fit), in addition to such Imprisonment.

Expenses

An Act for improving the Administration of Criminal Justice in England, 7 Geo.4, c.64, s.23 (1826)

XXIII Courts may order Payment of the Expences of Prosecution in certain Cases of Misdemeanor.

And whereas for want of Power in the Court to order Payment of the Expences of any Prosecution for a Misdemeanor, many Individuals are deterred by the Expence from prosecuting Persons guilty of Misdemeanors, who thereby escape the Punishment due to their Offences; for Remedy thereof, be it enacted, That where any Prosecutor or other Person shall appear before any Court on Recognizance or Subpoena, to prosecute or give Evidence against any Person indicted of any Assault with Intent to commit Felony, of any -Attempt to commit Felony, of any Riot, of any Misdemeanor for receiving any stolen Property knowing the same to have been stolen, of any Assault upon a Peace Officer in the Execution of his Duty, or upon any Person acting in aid of such Officer, of any Neglect or Breach of Duty as a Peace Officer, of any Assault committed in pursuance of any Conspiracy to raise the Rate of Wages, of knowingly and designedly obtaining any Property by false Pretences, of wilful and indecent Exposure of the Person, of wilful and corrupt Perjury, or of Subornation of Perjury, every such Court is hereby authorized and empowered to order Payment of the Costs and Expences of the Prosecutor and Witnesses for the Prosecution, together with a Compensation for their Trouble and Loss of Time, in the same Manner as Courts are herein-before authorized and empowered to order the same in Cases of Felony; and, although no Bill of Indictment be preferred, it shall still be lawful for the Court where any Person shall have bond fide attended the Court, in obedience to any such Recognizance, to order Payment of the Expences of such Person, together with a Compensation for his or her Trouble and Loss of Time, in the same Manner as in Cases of Felony: Provided, that in Cases of Misdemeanor the

Power of ordering the Payment of Expences and Compensation shall not extend to the Attendance before the Examining Magistrate.²

² *Legislation.gov.uk*, <https://www.legislation.gov.uk/ukpga/Geo4/7/64/body/enacted>, accessed 2 October 2020.

Appendix B: London map with locations of sexual violence between men

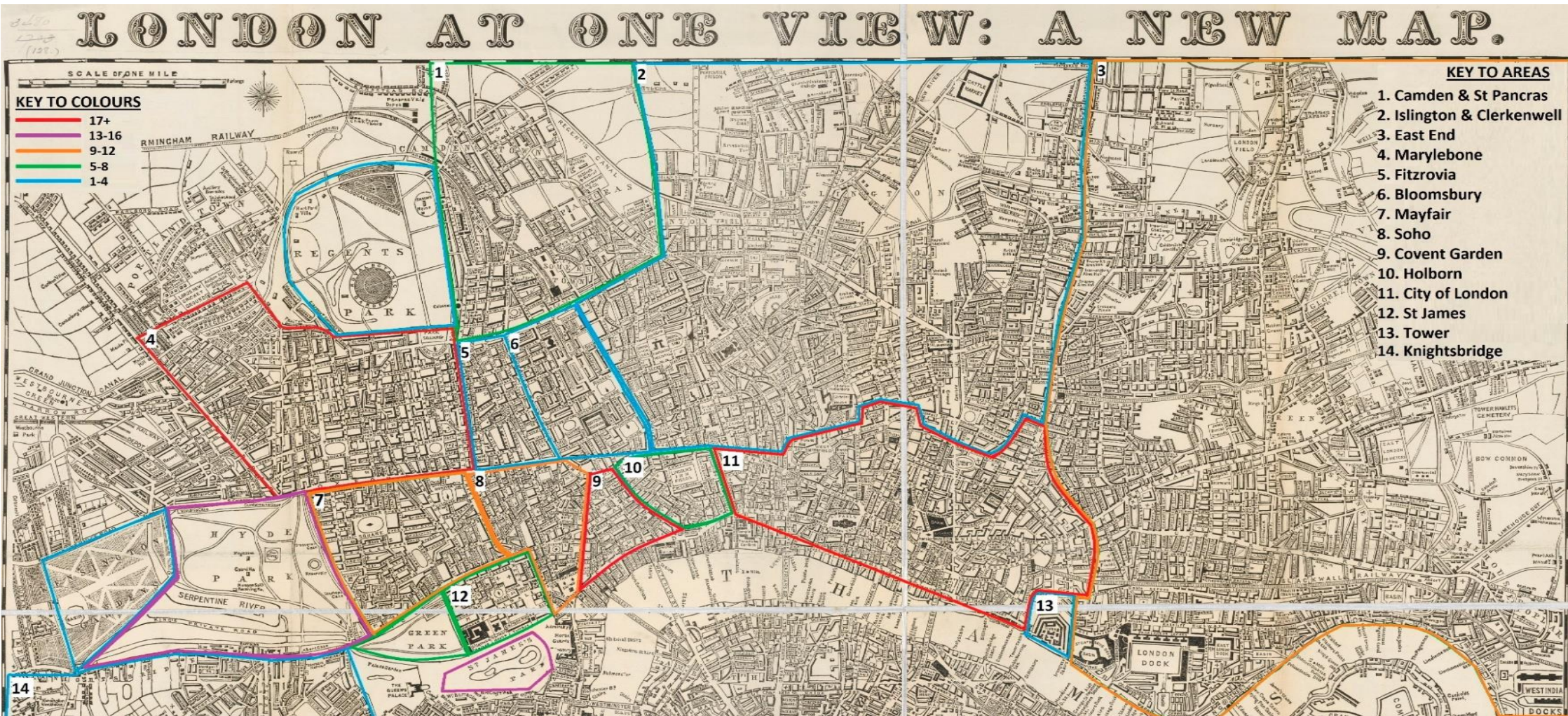


Figure 20 - Location clusters of 165 cases of alleged male to male sexual violence. Basemap source: © The British Library Board, Maps.3480.(128)

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